IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
MALLINCKRODT PLC, *et al.*,[1]	Case No. 20-12522 (JTD)
Debtor.	(Jointly Administered)
	Re: D.I. 3405, 3406

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Attestor Limited, on behalf of itself and its affiliated entities, including Avon Holdings I, LLC ("Attestor"), and Humana, Inc. ("Humana", and together with Attestor, the "Acthar Insurance Claimants"), creditors in the above-captioned chapter 11 cases, hereby appeal to the United States District Court for the District of Delaware, pursuant to 28 U.S.C. § 158(a) and Rules 8002(a)(1) and 8003 of the Federal Rules of Bankruptcy Procedure, from the order (D.I. 3406) (the "Order") sustaining the *Debtors' First Omnibus Objection to Unsubstantiated Claims (Substantive)* (D.I. 2165), entered on July 23, 2021, by the United States Bankruptcy Court for the District of Delaware, and the oral bench ruling issued in connection with the Order (the "Bench Ruling"), as so ordered at D.I. 3405.[2]

---

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://restructuring.primeclerk.com/Mallinkrodt. The Debtors' mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

[2] Attestor entered into an agreement with Humana to pursue and participate in any proceeds of Humana's claims against the Debtors with respect to the distribution, marketing, and sale of Acthar. *See* Verified Statement of Willkie Farr & Gallagher LLP and Morris, Nichols, Arsht & Tunnell LLP Pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure, D.I. 2066. Attestor is also the transferee and owner of additional Acthar-related claims subject to the Order and Bench Ruling, which were filed by United Healthcare Services, Inc. ("United") and OptumRx Group Holdings and OptumRx Holdings, LLC (together, "OptumRx"). *See* Transfer/Assignment of Claim, D.I. 2317. For the avoidance of doubt, this notice of appeal includes all of the aforementioned claims.

PLEASE TAKE FURTHER NOTICE that a copy of the Order is attached hereto as **Exhibit A** and copies of the Bench Ruling and the so ordered docket entry are attached hereto as **Exhibit B**.

PLEASE TAKE FURTHER NOTICE that the names of all parties to the Order and Bench Ruling appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Counsel to the Acthar Insurance Claimants	**Counsel to Mallinckrodt PLC and its affiliated debtors**
MORRIS, NICHOLS, ARSHT & TUNNELL LLP Donna L. Culver (Bar No. 2983) Robert J. Dehney (Bar No. 3578) Matthew B. Harvey (Bar No. 5186) 1201 North Market Street, 16th Floor P.O. Box 1347 Wilmington, DE 19899-1347 Telephone: (302) 658-9200 Facsimile: (302) 658-3989 Email: dculver@morrisnichols.com rdehney@morrisnichols.com mharvey@morrisnichols.com WILLKIE FARR & GALLAGHER LLP Matthew A. Feldman Matthew Freimuth Benjamin P. McCallen Richard Choi Philip F. DiSanto 787 Seventh Avenue New York, NY 10019 Telephone: (212) 728-8000 Email: mfeldman@willkie.com mfreimuth@willkie.com bmccallen@willkie.com rchoi@willkie.com pdisanto@willkie.com	RICHARDS, LAYTON & FINGER, P.A. Mark D. Collins (No. 2981) Robert J. Stearn, Jr. (No. 2915) Michael J. Merchant (No. 3854) Amanda R. Steele (No. 5530) Brendan J. Schlauch (No. 6115) One Rodney Square 920 N. King Street Wilmington, Delaware 19801 Telephone: (302) 651-7700 Facsimile: (302) 651-7701 Email: collins@rlf.com stearn@rlf.com merchant@rlf.com steele@rlf.com schlauch@rlf.com LATHAM & WATKINS LLP George A. Davis George Klidonas Andrew Sorkin Anupama Yerramalli 885 Third Avenue New York, New York 10022 Telephone: (212) 906-1200 Facsimile: (212) 751-4864 Email: george.davis@lw.com george.klidonas@lw.com andrew.sorkin@lw.com

EIMER STAHL LLP Benjamin E. Waldin Scott C. Solberg James W. Joseph Sarah H. Catalano 224 South Michigan Avenue Suite 1100 Chicago, IL 60604 Telephone: (312) 660-7600 Email: bwaldin@eimerstahl.com ssolberg@eimerstahl.com jjoseph@eimerstahl.com scatalano@eimerstahl.com	Jeffrey E. Bjork 355 South Grand Avenue, Suite 100 Los Angeles, California 90071 Telephone: (213) 485-1234 Facsimile: (213) 891-8763 Email: jeff.bjork@lw.com Jason B. Gott 330 North Wabash Avenue, Suite 2800 Chicago, Illinois 60611 Telephone: (312) 876-7700 Facsimile: (312) 993-9767 Email: jason.gott@lw.com

Dated: July 28, 2021
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew B. Harvey
Donna L. Culver (Bar No. 2983)
Robert J. Dehney (Bar No. 3578)
Matthew B. Harvey (Bar No. 5186)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Email: dculver@morrisnichols.com
rdehney@morrisnichols.com
mharvey@morrisnichols.com

-and-

WILLKIE FARR & GALLAGHER LLP
Matthew A. Feldman (admitted *pro hac vice*)
Matthew Freimuth (admitted *pro hac vice*)
Benjamin P. McCallen (admitted *pro hac vice*)
Richard Choi (admitted *pro hac vice*)
Philip F. DiSanto (admitted *pro hac vice*)
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000
Email: mfeldman@willkie.com
mfreimuth@willkie.com
bmccallen@willkie.com
rchoi@willkie.com
pdisanto@willkie.com

-and-

EIMER STAHL LLP
Benjamin E. Waldin (admitted *pro hac vice*)
Scott C. Solberg (admitted *pro hac vice*)
James W. Joseph (admitted *pro hac vice*)
Sarah H. Catalano (admitted *pro hac vice*)
224 South Michigan Avenue
Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Email: bwaldin@eimerstahl.com
ssolberg@eimerstahl.com
jjoseph@eimerstahl.com
scatalano@eimerstahl.com

Counsel to the Acthar Insurance Claimants

Exhibit A

Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
MALLINCKRODT PLC, *et al.*,	)	Case No. 20-12522 (JTD)
	)	
Debtor.	)	
	)	**Re: Docket No. 2165**

ORDER

For the reasons stated on the record at the hearing held on this day, the Debtors' First Omnibus Objection to Unsubstantiated Claims (Substantive) (D.I. 2165) is sustained.

SO ORDERED.

Dated: July 23rd, 2021
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Bench Ruling and Docket Entry

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
	.	Case No. 20-12522 (JTD)
MALLINCKRODT PLC, *et al.*,	.	
	.	
	.	Courtroom No. 5
	.	824 North Market Street
	.	Wilmington, Delaware 19801
	.	
Debtors.	.	July 23, 2021
. . . . .	.	9:03 A.M.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Michael J. Merchant, Esquire
RICHARDS, LAYTON & FINGER, P.A.
Rodney Square
920 N. King Street
Wilmington, Delaware 19801

- and -

George Klidonas, Esquire
Hugh Murtagh, Esquire
Christopher Harris, Esquire
Keith Simon, Esquire
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022

Audio Operator: Sherry J. Stiles, ECRO

Transcription Company: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
(302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

TELEPHONIC APPEARANCES (Cont'd):

For Opioid Claimants:
Arik Preis, Esquire
Mitchell Hurley, Esquire
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
Bank of America Tower
New York, New York 10036

For Acthar Group:
Daniel Astin, Esquire
CIARDI CIARDI & ASTIN
1204 North King Street
Wilmington, Delaware 19801

- and -

Donald Haviland, Esquire
HAVILAND HUGHES LLC
111 S. Independence Mall E Unit 1000
Philadelphia, Pennsylvania 19106

For Humana:
Benjamin McCallen, Esquire
Matthew Freimuth, Esquire
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019

MATTERS GOING FORWARD:

7. [SEALED] Debtors' Motion to Quash (A) Ad Hoc Acthar Group's Notice of Deposition of Melissa Falconi and (B) Ad Hoc Acthar Group's Notice of Deposition of Hugh M O'Neill [Docket No. 3289 – filed July 20, 2021]

8. Ad Hoc Acthar Group's Motion to Compel Discovery and Response to Debtors' Motion to Quash [Docket No. 3385 – filed July 22, 2021]

(Proceedings commence at 9:03 a.m.)

THE COURT: Good morning, everyone. This is Judge Dorsey. We're on the record in Mallinckrodt PLC, Case Number 20-12522.

For those who haven't seen this before, this is the new look for our Zoom calls. This is in anticipation of getting ready to go back to live hearings, but because we will continue to use Zoom instead of CourtCall even when we have live hearings, this is how things will look going forward.

So, with that, I'll turn it over to debtors' counsel to run the agenda.

MR. MERCHANT: Thank you, Your Honor. Michael Merchant of Richards, Layton & Finger on behalf of the debtors.

Your Honor, before turning to the agenda, I believe Mr. Alberto sent chambers an email on July 15th, relating to an agreement with respect to payments pursuant to the KEIP order, and the OCC wanted to make certain statements on the record regarding that agreement. So, if acceptable to the Court, I'd like to turn the podium over to Mr. Preis to make those statements now, and then Mr. Klidonas will then be making a brief statement on behalf of the debtors.

THE COURT: All right. Mr. Preis, go ahead.

MR. PREIS: Good morning, Your Honor. This is

Arik Preis from Akin Gump. Can you hear me?

THE COURT: I can, thank you.

MR. PREIS: Okay. I like the new look.

Good morning, Your Honor. Arik Preis, Akin, Gump, Straus, Hauer & Feld, LLP on behalf of the Official Committee of Opioid Related Claimants.

Your Honor, as agreed with the debtors, the OCC wanted to take a few minutes at the outset of the hearing to update the Court with regard to the KEIP. My remarks will be (indiscernible) into four parts:

First, a reminder of what the KEIP order stated with regard to our investigation (indiscernible)

Second, a brief summary of what we have done to date.

Third, a very brief overview of what we've preliminarily found.

And fourth (indiscernible)

THE COURT: Mr. Preis.

MR. PREIS: (Indiscernible)

THE COURT: Mr. Preis --

MR. PREIS: Yes.

THE COURT: -- you're breaking up a little bit on your presentation. You're skipping out a little bit. I think your voice is dropping and it's not picking up on the microphone, maybe.

MR. PREIS: Oh, okay. Oh (indiscernible) is that any better?

THE COURT: That's better.

MR. PREIS: Okay. Okay. I promise this presentation will not take more than five minutes.

First, a reminder of what is in the KEIP order. In accordance with Paragraph 4 of the KEIP order, the OCC and the debtors agreed that the OCC would conduct (indiscernible) investigation to the 12 individuals who are part of the KEIP. In connection with the investigation, the debtors would review and, as appropriate, produce up to an additional 50,000 (indiscernible) in other words, in addition to the documents that we're already producing under our Rule 2004 investigation, that were specifically targeted to the individuals in the KEIP.

The debtors also agreed to produce privilege logs and witnesses for deposition (indiscernible) our investigation, subject to the debtors' right to object to any such deposition. In return, we agreed to inform the debtors of any facts we found that would lead us to believe that the KEIP participants engaged in wrongdoing that might (indiscernible) by us to withhold (indiscernible) KEIP payment.

We were also permitted, by agreement and in the order, that, by no later than July 15th, which was obviously

last week, in our discretion, to file a motion to enjoin any future payment and/or claw back any Q4 2020 payments previously made to KEIP participants under the 2020 KEIP, based on any findings that we uncovered in our investigation.

Those rights, which are under Paragraph 4 of the KEIP order, are in addition to those in Paragraph 3 of the KEIP order, which states that, under certain circumstances, KEIP participants are not eligible to receive any (indiscernible) payments and that all parties' rights are reserved to seek disgorgement of previous payments under certain circumstances.

As everyone knows, as Your Honor knows, we didn't file anything on July 15th, but instead, we decided to continue our investigation in light of the items I'm going to mention in a moment.

We also, of course, reserve our rights under Paragraph 3 of the KEIP order, as well as our right to object to the debtor (indiscernible) releases being sought pursuant to the proposed plan, some of the KEIP (indiscernible)

Okay. Second, our investigation. Although we have vigorously pursued our investigation of potential misconduct by the KEIP participants over the past few months, that investigation was not complete by July 15th, nor could it be. Although the debtors, to their credit, have produced a significant amount of documents, the reason that the

investigation could not have been complete by July 15th was that discovery was not complete by (indiscernible) for instance, just yesterday, we received -- the debtors produced more than 12,000 documents in response to our 2004 request. And we understand that further productions are still contemplated.

In addition, just one week before the July 15th deadline, the debtors produced approximately 37,000 documents. It was obviously impossible to review and consider that information before July 15th. That production included (indiscernible) specific communications that the debtors had previously withheld as privileged, but had downgraded.

Moreover, we have found that many documents that the debtors produced in response to our 2004 investigation have been important in our analysis of the debtors' practices concerning opioids and (indiscernible) analysis of the KEIP.

As of July 15th, the debtors had also not completed production of privilege logs the OCC needs to analyze in connection with our investigation. While the debtors, to their credit, again, provided certain interim privilege logs, metadata logs in response to our requests for information on a rolling basis, the metadata logs lacked standard information, the basis of which (indiscernible) withheld.

Furthermore, the majority of the log documents -- or the log information, including several thousand entries involving KEIP participants, was provided just days before July 15th.

In addition -- and this, again, we -- is by agreement -- no depositions have taken place yet, which makes sense, given that the debtors' document production is not complete. The debtors have been adamant that the (indiscernible) witnesses be the (indiscernible) to understand (indiscernible) all parties and all subject matter. And the Court recently entered a confirmation schedule and protocol calling for fact witnesses to continue through August 13th.

We agreed to the July 15th deadline back in April, when the OCC anticipated that all the debtors' document production would be substantially completed in June, with depositions to be completed (indiscernible) in July, in anticipation of a confirmation hearing in August. That was the schedule back then. Obviously, that's not (indiscernible) anymore.

In light of the shifting time line, in early July, the OCC, we reached out to the debtors, described what we had found to date, and to seek an extension of the time to complete our investigation and potentially file a motion. The debtors refused, which was fine. Notwithstanding this

refusal and given that our investigation is still ongoing, we made the determination not to file a motion on July 15th, but to reserve our rights (indiscernible)

Third, a very, very brief update as to what we have found to date. And we've conveyed this update, both orally and in writing and in much greater detail to the debtors outside professionals, the outside professionals to the governmental ad hoc group and their Attorneys General, subject in each case to the terms of the protective order.

We've reviewed the documents and we believe some of the documents raise concerns regarding some, but not nearly all of the KEIP participants in connection with the sale, marketing, and distribution of prescription opioids (indiscernible) such conduct comes in the form of certain (indiscernible) the marketing and sale of the debtors' branded prescription opioid medication, as well as in the monitoring of specific orders of the debtors' (indiscernible) opioid products.

We believe the debtors' practices included the targeting of doctors known to prescribe (indiscernible) quantities of opioid pills and focus on achieving prescription metrics and incentivizing sales reps (indiscernible) we believe that the debtors and these individuals engaged in these practices at a time when the addictive properties of opioids were completely understood

and widely known.

While we believe that the documents discovered to date raise significant concerns, we also recognize that our investigation is not complete. As I noted, documents still must be produced and reviewed and we still must depose certain key participants to learn more. Filing a motion at this time would be premature (indiscernible)

Finally, our next steps. In addition to establishing whether grounds exist to claw back or enjoin KEIP payments, the investigation will establish whether we have a basis to object to the proposed releases that the debtors are proposing to offer (indiscernible) at the appropriate time, and if we determine that doing so is in the best interests of the opioid defendants, we will raise these issues.

That's the extent of our statement. I understand that the debtors would like to make some statements, as well. But before we do that, do you have any questions for me?

THE COURT: No questions. Thank you, Mr. Preis.

MR. PREIS: Thank you.

THE COURT: Who is speaking on behalf of the debtors? I'm sorry, I forgot. Mr. Klidonas, go ahead.

MR. KLIDONAS: Good morning, Your Honor. George Klidonas of Latham & Watkins on behalf of Mallinckrodt PLC and its affiliated debtors.

The debtors' professionals, as Mr. Preis mentioned, have discussed with the OCC their preliminary findings and the relevance of such preliminary findings on the key employee incentive plan or the "KEIP," as we call it, and the releases proposed under the Chapter 11 plan. But the debtors do feel compelled to respond to the OCC's statement.

First, the debtors have fully participated and continue to fully participate in the discovery process with the OCC. We've worked as quickly as possible to produce documents to the OCC. That said, the debtors, as mentioned earlier, did not agree to the OCC's request to extend their deadline to file a motion under the KEIP order because the requested extension would not -- would have been after the payment of the first half of the 2021 keep. And our position is those payments should be made when the company is obligated to make those payments.

Regarding the substance of the OCC statement, the debtors disagree with the OCC's interpretation of the small set of documents that they provided, about 60 that they showed us. Many of these documents have already been produced to the states and other multi-district litigation plaintiffs; and, therefore, these same allegations were raised pre-petition in a variety of different complaints.

The company has defended those pre-petition allegations vigorously in the past and the proposed opioid

settlement resolves all of those claims and allegations in their totality. The debtors believe that conflating the entitlement to KEIP payments is really sort of a veiled attempt at calling into question the entire settlement reached and the releases set forth in the plan.

If what the OCC wants to do is re-litigate these allegations that have been settled, then debtors believe that the proposed opioid settlement could have the potential of unraveling. But we decided, on balance, having a fight on this issue right now would just be a complete waste of estate resources and addressing confirmation of related issues in a vacuum this early would just be unproductive.

To put this into context, the debtors believe that the OCC's preliminary findings regarding the actions of a small subset of KEIP participants -- as of today, our understanding, it's about three of them -- and certain aspects of the monitoring and marketing practices are generally misguided.

The documents raised by the OCC are about from 2011 to 2015, when the companies produced and sold the branded pain products. We believe that Mallinckrodt branded pain medication never made up more than about .5 percent of the opioid pain market. In addition, the debtors contend that every Mallinckrodt pain product was FDA approved, every milligram of such product and distributed was and is

authorized in advance by the DEA and then reported back to the DEA in accordance with compliance protocols.

The debtors also believe and contend that the purpose of the branded opioid marketing strategy was to inform prescribers of the benefits of its longer lasting, extending relief pain products, that serve generally as an alternative, to allow patients to take these medications less frequently.

And finally, with respect to the SOM -- the suspicious order monitoring -- Mallinckrodt's historical controls have been lauded by the DEA as exemplary and consistent with what the DEA expects for Mallinckrodt as an industry leader. But as Mr. Preis mentioned, you know, just as the OCC is continuing its review, we, the debtors -- you know, the investigations being conducted by the independent directors, more specifically, in connection with the plan releases are still ongoing and are assessing the conduct that the OCC is alleging.

So the last point I just want to raise on discovery, Your Honor, is we just want to sort of clarify the record a little bit. The OCC has been the beneficiary of extensive discovery in these Chapter 11 cases. As of July 14th, the OCC has received 95 percent of the documents responsive to their requests. The vast majority of these were produced by the end of June.

The negotiated discovery with respect to the OCC's KEIP review was produced by the end of April, as contemplated by the KEIP order.

And then I think it was mentioned earlier, interim privilege logs have been provided and metadata for all privileged documents was sent while the final privilege logs are being completed.

And no depositions have been sought or noticed in connection with the KEIP to date, nor was there any discovery about any documents found by the OCC until almost two months after the KEIP (indiscernible) was provided.

So, just to circle back and close the loop, you know, neither the OCC, nor the debtors, as we both mentioned, are looking to have this argument today on these issues. We both felt the need to at least provide the Court with some context and with their perspectives of where things stand.

With that, Your Honor, I think we can turn to the agenda today.

THE COURT: All right. Thank you, Mr. Klidonas.

MR. KLIDONAS: You're welcome.

THE COURT: Mr. Merchant, back to the agenda.

MR. MERCHANT: Yes, Your Honor. Turning to the agenda, I think, based on the dialogue with chambers this week, it probably makes sense to turn to Agenda Items 7 and 8 first, which are the discovery-related motions related to the

unsubstantiated claims objection going forward today. So, with that, I'll cede the podium to Mr. Murtagh to address the debtors' motion to quash.

THE COURT: Mr. Murtagh.

MR. MURTAGH: Good morning, Your Honor. It's Hugh Murtagh from Latham & Watkins on behalf of the debtors. Can you hear me okay?

THE COURT: Yes, thank you.

MR. MURTAGH: Your Honor, I'll lay out where I think we are on discovery disputes and then tell you how I plan to go through it, subject to the Court's approval. My understanding based on the filings by the Ad Hoc Acthar Group yesterday are as follows:

We have a live motion to quash as to depositions noticed for Mr. O'Neill and Ms. Falcone. I don't believe the Ad Hoc Acthar Group is continuing to press requests for a deposition of Ms. Falcone. So, as to the motion to quash, I will focus on the request to depose Mr. O'Neill.

The Ad Hoc Acthar Group also filed its motion to compel production of certain documents, and that remains open. And I understand that's a portion of the motion to compel. But if it's more expedient for Your Honor, I'll address that also while I'm addressing the motion to quash Mr. O'Neill's deposition.

THE COURT: Yeah, let's do them all at once.

MR. MURTAGH: Okay, Your Honor.

Your Honor, the headline on all of this is that these discovery requests are months late, irrelevant, and unnecessary. The background, as Your Honor knows, is that the debtors filed their objection to the Ad Hoc Acthar Group's claims nearly three months ago, on April 30th. And as Your Honor also knows, we had a discovery dispute at that time about the scope of discovery in this matter and Your Honor made a ruling on the proper scope of discovery in this matter.

The debtors, thereafter, provided extremely broad discovery to the ad hoc group and also provided additional new discovery with targeted responses to questions asked, relating specifically to the subject matter here, which is substantiation for what we view as the unsubstantiated claims.

Thereafter, Your Honor, the ad hoc group had the opportunity to file two responses, and the second came over two months after the filing of the objection. The ad hoc group never, until last Friday, weeks after the filing of their second response and a week after the debtors' reply, even suggested that it had insufficient discovery.

Now the ad hoc group asserts that the debtors' reply somehow revealed to them an urgent need to depose Mr. O'Neill and to receive more documents. And they appear to

give two reasons, neither of which is persuasive, and I'll go through each of them, first dealing with Mr. O'Neill.

The first reason they give is that our reply somehow alerted them to the existence of a publicly reported opinion issued two years ago in the opioid MDL litigation. And in respect of that opinion, the ad hoc group argues that this belated discovered opinion is important because, first, it allegedly validates an alter ego theory of liability against PLC, and second, that Mr. O'Neill's testimony is critical to that supposed validation. Well, neither of those assertions is true, Your Honor.

First, to be clear, the opinion states only that the parties dispute and offer conflicting evidence on alter ego and the matter should be litigated at a later date. And that later litigation never occurred.

The second is that Mr. O'Neill's name is not even mentioned anywhere in the opinion.

So, apparently, on this, what the ad hoc group has in mind is a statement in the plaintiffs' brief that Mr. O'Neill did not recall details about certain Mallinckrodt entities' board composition. But Your Honor, on this supposed reason for deposing Mr. O'Neill, if the ad hoc group had wanted to explore alter ego theories and board composition, they could have done so over the last three months. They could have sought additional discovery. They

could have asked questions of Mr. Welch in deposition, and they can attempt to do so with Mr. Welch on the stand today. They do not need Mr. O'Neill for that. So the belated discovery of the MDL opinion and Mr. O'Neill's supposed importance to it is not a grounds for deposing Mr. O'Neill.

The second reason that the ad hoc group has given for deposing Mr. O'Neill is that he has allegedly become relevant because his name appears on a single document cited in the debtors' reply. That document is a board deck discussing Mallinckrodt Pharmaceutical International -- sorry -- Mallinckrodt Pharmaceutical Ireland Limited's decision-making responsibilities with regard to Acthar. And it was produced to Rockford pre-petition and it was offered in the brief to demonstrate that the ad hoc group had notice pre-petition of the involvement of Mallinckrodt Pharmaceuticals Ireland Limited with Acthar.

It does not make relevant anything Mr. O'Neill did or said. The only connection between that document and Mr. O'Neill is that his name appears I believe on an email cover sheet to the transmission of the document, that's it. So, having not made Mr. O'Neill irrelevant in any way, in any new way in the reply, this supposed second reason, his name is mentioned as a name attached to a document, also is not a reason to depose Mr. O'Neill.

And with regard to the deposition of Mr. O'Neill

in general, before turning to the RFPs, Your Honor, the bottom line is that the ad hoc group has repeatedly noticed Mr. O'Neill for deposition in these cases on what appears to be tactical grounds, and this is no different. I believe this is the third time they've done so. And now it appears to be an attempt to disrupt a hearing that's been three months in the making. And the delay in the timing on this is inexcusable and the deposition is wholly unnecessary.

With regard to the RFPs, Your Honor, the story is much the same. They are also inexcusably late, irrelevant, and unnecessary. Nevertheless, to be clear, in an attempt to avoid having a dispute before the Court, Your Honor, the debtors agreed to produce documents responsive to several of the requests and responsive to the requests on which we thought the ad hoc group was focused.

So, specifically, the debtors agreed to production of the O'Neill deposition in the 2019 opioid MDL proceedings and all exhibits, and also the entire record of the jurisdictional motion to dismiss dispute in that litigation, on which the ad hoc group is focused, and they now have those documents.

We also responded and made clear that all of the support -- all of the documents supporting our reply are attached to our reply. So that took care of three of the requests, Your Honor. And we maintained objection to four of

the requests.

Now one of those requests is for all of the documents used to prepare Mr. O'Neill for his deposition in 2019. And we object on the basis that that is work product and attorney/client privilege and not subject to production. The remaining three requests, Your Honor, are hopelessly over-broad and burdensome, in addition to being irrelevant and inappropriate. And what they comprise, Your Honor, is a request for all communications, documents, agreements and any other material relating to Acthar by, with, or about 32 different Mallinckrodt entities from the beginning of time to today.

Now, plainly, that request is hopelessly over-broad. But even if it were more limited, the request would still be hopelessly late and made without any attempt to discern whether there's a specific need or any documents that are sought are already in the voluminous productions that have been made to the Ad Hoc Acthar Group.

So, much like the request to depose Mr. O'Neill, Your Honor, the -- these requests have no basis to be made now. They're made without considering whether the information the ad hoc group requests is actually relevant or needed or even in their possession already. And it appears to be another attempt to insert a tactical delay into these proceedings. And in short, Your Honor, the time for this is

up, and the time to litigate these issues is now, on the full and complete opportunity and record that have been made over the last three months.

THE COURT: Okay. Thank you, Mr. Murtagh.

Let me hear from the ad hoc group.

MR. ASTIN: Good morning, Your Honor. Daniel Astin for Ciardi, Ciardi & Astin. My co-counsel Mr. Haviland will be presenting this morning. And we thank the Court for accommodating us this early, before the regularly scheduled hearing.

THE COURT: Mr. Haviland, go ahead.

MR. HAVILAND: Good morning, Your Honor. It seems to me that the debtors' objections and motion bases for both the depositions and the documents are three: The discovery is late, it's irrelevant and unnecessary. I don't know where the third prong comes in the rules, other than Rule 26 up to Rule 37, so I'll focus on the timing and the relevancy arguments.

I have to give a little context, Your Honor, so you can understand how this dispute came about. The debtors have known about the Acthar Plaintiffs' desire to take Steve O'Neill's -- or Hugh O'Neill's deposition since prior to the bankruptcy. You'll recall the first time we met, Your Honor, was on an emergent basis to quash the court-ordered deposition of Mr. O'Neill out of the Rockford Court.

The debtors prevail upon the Court, saying that they needed a breathing spell, and that Mr. O'Neill and Mr. Trudeau were critical to the reorganization function. I remember Mr. Stearn arguing for an hour at the end of that hearing, only to have it resolved with the Court directing the parties to meet and confer to schedule that deposition. And we've attempted to do that -- and Mr. Astin can attest -- multiple times over the last ten-plus months, and never once have the debtors offered to provide a deposition date for Mr. Trudeau or Mr. O'Neill.

So the context is important. We had court-ordered deposition dates coming into this bankruptcy. The debtors, in the personages of Mallinckrodt PLC and ARD had filed motions to quash for Apex Protection, and they were denied on a full record by a Federal Judge.

And the reason why this issue has come to the fore today, Judge, is we got a reply brief after hours on July 9th, a Friday night. It was almost 50 pages, well beyond the page limit provided under the rule. The Court granted leave to the debtors to put that volume before the Court. And in that volume -- on a reply, mind you, this is a reply to the response to their objections -- they proceeded down a number of paths that weren't raised in the initial objection, and that's why this is important. There's nothing late about inquiring about a position of the debtors that's newly framed

in a fifty-page filing on reply.

Now we noticed Mr. O'Neill's deposition last Thursday. We asked -- and we also noticed his one-time executive assistant, Melissa Falcone, who then become a Vice President of Patient Services, and we now know through Arnold & Porter is no longer with the company. And I point that out, Judge, because, last Friday, Arnold & Porter represented, on behalf of the debtors, they don't represent Ms. Falcone. She's a former executive employee. I have an email at four o'clock last Friday to that effect:

"Don, Ms. Falcone left the company shortly after you deposed her in February 2020, we do not currently represent her."

The debtors have not demonstrated to this Court how they have a right to move for a protective order on a former employee. And when we got that notice, Judge, we expedited a subpoena. And you'll see in our filings, we provided not one, but two affidavits of service of Ms. Falcone in Illinois, where she currently resides, at her place of business, at AbbVie, and her home address.

So, since the time of service, last Friday, we haven't heard from Ms. Falcone or counsel. All we heard from the debtors was they don't represent her. So they have a procedural problem in saying that they can quash a subpoena of a former employee more than a hundred miles from this

Court.

And realizing that it was more than a hundred miles, we issued the subpoena under the Northern District of Illinois caption, the Rockford case, so that that court would have jurisdiction over any discovery disputes. I'm not suggesting Your Honor doesn't, but we hadn't heard from the debtors at all until late in the day, when they filed the motion for a protective order on Wednesday, taking this position. There's a fundamental problem with their approach in trying to prevent Ms. Falcone's deposition, and I'll get to the relevancy in a moment.

But as further background, the Court should also understand that the Ad Hoc Acthar Group has produced four, four clients for depositions: The City of Rockford; this Acument Global Technologies, whose designee sits as the chair of the committee; Teamsters Local 830; and Dakota County, Nebraska. Four. We also produced an expert for deposition. That's five depositions.

The debtors have yet to produce one executive for deposition. Mr. Welch, who I see -- good morning, Mr. Welch -- we've had the opportunity to depose him too many times. I'm sure he's tired of it; we are, as well. He seems to be their go-to witness. And I credit him for his ability to try to answer questions. But Judge, he worked in the specialty generics division of the company.

Mr. O'Neill is the Executive Vice President of Commercial Operations of the brand business. And what you're going to hear about today in the hearing is whether or not we're entitled to claim against entities in the brand business.

Now the reason why we looked to see whether there had been any issue involving alter-ego was because in those notices I just referenced the debtors asked my clients, at request number nine, all the basis for a theory of alter-ego. And it caused plaintiff's counsel to scratch heads saying why are they asking this question. It seems like they know something we don't.

Sure enough we look and we see Judge Dorsey -- I'm sorry, you're Judge Dorsey -- Judge Polster -- I'm a little tired, Your Honor, it's a Friday -- in the City of Summit case, the In Re National Opioid Litigation, 2019 ruled on a similar motion by Mallinckrodt PLC seeking to prevent its jurisdiction in conjunction with two subsidiaries, the SpecGx generic company and then an entity by the name of Mallinckrodt LLC which the debtors say is a generic company; we have evidence to say that it's a brand company. It signed contracts on behalf of the Acthar business. So that is a factual dispute.

We're only getting to the issue of whether or not we can avail ourselves of the same theory that the generic

opioid plaintiffs have viewed. And in the ruling by Judge Polster he found, and I'm at star of the Lexus case 92, the court finds that the issue of whether SpecGx LLC and/or Mallinckrodt LLC are the alter-egos of Mallinckrodt PLC should be litigated in the track one trial. Mr. Murtagh says it was kicked down the road. No, the judge found enough evidence of alter-ego and it was evidenced.

Here is the problem, Judge, everything was filed under seal. We asked the debtors will you give us that material so we can understand the basis of the ruling. They said -- well, they didn't respond initially. They eventually had us go back to plaintiff's counsel (indiscernible), we did. We needed their consent to have those under seal pleadings and documents produced. We finally just got them the other day. In fact, late yesterday. We added them to our exhibit list.

Counsel is right that Judge Polster doesn't detail the evidence because it was under seal and counsel is correct that plaintiff's counsel, in their brief, repeatedly cited to the deposition transcript of the head of commercial operations, Mr. O'Neil. And why it's evidentiary here, Judge, and why his deposition here is so critical the senior most person in charge of the entire brand side business said I don't differentiate companies. To me it's Mallinckrodt, its Mallinckrodt Pharmaceuticals. I don't know who pays my

check, I don't think PLC, LLC, any subsidiary company, I am in charge of all of it; operations are mine. I make those decisions.

We put that transcript before the court for later, but, Judge, that is just a snapshot of the issue that the debtors are presenting to the court. Now remember it's the debtor's objecting to our claims against entities like Mallinckrodt LLC who signed contracts. That is why the ruling by Judge Polster is so important because LLC is also on the generic side business in opioids and the judge there said that goes to trial.

Now I'm not going to pre-argue today's issues, but that is the backdrop of what began in October with Mr. O'Neil has continued since came to a head this past week and last week because of the importance of his deposition. Unbeknownst to us, but fully known by the debtors who were litigating over the opioid litigation.

Now we also know that Arnold & Porter has represented Mr. O'Neill because at Exhibit 48 of our exhibits today that we shared with Your Honor Arnold & Porter abruptly adjourned Mr. O'Neil's deposition. It had been scheduled for November citing that he had a problem and that he couldn't appear. At some point the debtor has to put up a witness other than Mr. Welsh. I'm sure Mr. Welsh will appreciate that. I noticed, Judge, that others have noticed Mr. O'Neil,

the committees have noticed Mr. O'Neil.

The debtors are unwilling to negotiate a date, they have been unwilling to talk about an omnibus schedule for discovery. Mr. Astin has tried repeatedly to get there to be an omnibus approach to discovery and not just plan discovery, discoveries relating to our issues. When I say our issues their objections, the objection today, but they say you don't get them here because he's irrelevant and I suppose we will hear weeks from now whether or not they're going to produce him later.

Relevancy is not a grounds to quash a deposition notice. Counsel has only argued relevancy and timing. I have given you the timing. He's relevant. There is no one more relevant then Mr. O'Neill when it comes to the commercial operations of the brand side business. I think Mr. Welsh would freely admit that if asked. So he should be deposed, he should be asked -- forced to answer questions about these distinct entities that the debtors are now claiming for the first time have independence of the PLC.

Why that is important, Judge, and you probably read this in the papers, they're now arguing this dual position that in some senses they're a single entity, that Mallinckrodt is Mallinckrodt. In response to the Humana brief they raised the Copperweld antitrust decision which says that a parent cannot conspire and agree with a

subsidiary. Well that is right, but they don't show the court, and we will show the court later, that Copperweld was further to say because it's a single enterprise because there's a purpose between a parent and a sub, and that's why you can't have a conspiracy between those entities.

The debtors are trying to do that now by saying that somehow we had to sue every single disparate subsidiary, but they never made that argument in Rockford. They never made that argument 420. They never made that argument in 322. In fact, they never objected to our suing the PLC. I note that they did object in the Human case, but not in our case.

So we're being pushed to a point where now all of a sudden the debtor is taking a completely different approach and they're saying you don't get to depose the one witness who can speak to that issue whether or not there's independence of form, function, decision making of all these disparate entities and the head of commercial operations knows that better than anybody else.

The reason why it's important, Judge, is they put it in their reply. They are arguing we should have known. The Ad hoc Acthar group should have known better, should have done more and all I'm going to cite to, Your Honor, is what we put in the record (indiscernible) 147 through 162 is the discovery in Rockford. We issued four sets of discovery. We

asked for all contracts, and this is important the defendants and any third-party relating to distribution, pricing, marketing, sales of Acthar. Repeatedly Mallinckrodt said they complied.

The court ordered no less than three times compliance. In ECF 171, 224 and 354 which are Exhibits 152, 153, and 154 of the evidence we put in. Court orders and repeatedly they say we produced the documents. We propounded the request last week to say, okay, to Mr. Murtagh's point. If the record is what the record is and they did respond to the one request give us all the evidence that supports your reply. Mr. Murtagh responded you have it. Well then we said we want to make sure we have all the evidence of the discussions, the contracts, presentations, communications, discussions of Acthar between the non-debtor entities.

The response is interesting, burden. Burdon denotes we investigated, we've seen that it's too much, it's too difficult. They haven't put an affidavit of burden forward, that's why I couldn't discuss with Mr. Murtagh how do we get past that objection. He didn't articulate to us. He didn't say, Mr. Haviland, you have 100,000 pages of documents is there some way we can give you (indiscernible) to say, okay, this one speaks to all the other documents. We never had that discussion. They simply say no. They say no that it's irrelevant and burdensome. It's relevant because,

Your Honor, we did have that hearing on the motion to compel and Your Honor said that we can follow the money and follow the function. That is what we are trying to do.

When we got the reply and we see them putting documents in from the Rockford litigation which are, frankly, cherry-picked out of the record Ms. Falconi's emails, Mr. O'Neil's emails, and then trying to ascribe some meaning to that that we should have known that this ARD entity that we sued under the parent, PLC, the entire form and function was blown up and all the functions went to a UK company and an Irish company.

Your Honor, no witness ever said that. We deposed William Hillmer as a corporate -- well the FDC deposed him as a corporate designee in 2016, that's 159. The corporate designee of Mallinckrodt. He never said that. And by the way, he was designated one month after this company adopted the (indiscernible) process where they're having these two foreign parents make decision making. Did he perjure himself he certainly did tell the truth.

Then we deposed him later on July 21st, 2020. I asked him, did you testify truthfully, that's Exhibit 162, he said yes. Has anything changed; no. We deposed Ms. Falconi February 28th, 2020, Exhibit 160, who do you work for; Mallinckrodt Pharmaceuticals. That entity doesn't exist. She was the right-hand to Mr. O'Neil. Never once did she

say, when asked about pricing distribution, Acthar, Mr. Haviland, we go to Ireland. We have to get the Irish company's approval.

Then we deposed Mike Close [phonetic], the "closer" they call him, the contract guy, the guy actually involved in all the contracts, not once did he ever say here's what happens, by the way, that's Exhibit 161, we have to go to Ireland and the UK to get approval for all pricing, distributions, decision-making on Acthar. They are telling us, through this court, that we failed in our job.

Your Honor, we have four sets of written discovery, three court orders, fifteen depositions only four of which are current employees of Mallinckrodt. We have got the debtor moving repeatedly to prevent depositions starting with Mr. O'Neil and continuing through today. The question is when are we going to get due process, when are we going to get the discovery.

These debtors want to have an objection where they get to put Mr. Welsh up and say what they want him to say. And I'm not suggesting that he's not testifying as an informed witness for the company, but he doesn't have direct personal knowledge of those issues. He's not on the emails. He wasn't at the presentations. He's not part of those organizations.

When are we going to get the discovery. Now I'm

not suggesting that we adjourn today. I think we use today. But I am suggesting we can't close, not with the record the way it is as created by these debtors.

Thank you.

THE COURT: Mr. Murtagh?

MR. MURTAGH: Yes, Your Honor. Just to try to bring some clarity I don't understand Mr. Haviland to still be requesting a deposition of Ms. Falconi and it was not made part of the motion to compel. I didn't hear any reason why he needs Ms. Falconi. So I am going to assume that that's not part of the motion. I am going to leave Ms. Falconi out of this for now. That would take care of one of the disputes.

The second with regard to Mr. O'Neil's deposition. I understand from Mr. Havilland, as he's told the court repeatedly, that he would like an opportunity to examine Mr. O'Neil. Mr. O'Neil will be put up for examination at the beginning of August as part of plan confirmation. There are many people who have an interest in deposing Mr. O'Neil and there will be an opportunity to depose Mr. O'Neil.

There have been repeated occasions in this case in which Mr. Haviland has done what he's done today which is to say in the context of a separate specific matter it's unfair that he has not been allowed to depose Mr. O'Neil. He, in fact, had raised this question back in May and asserted, in

court, that he needed to depose Mr. O'Neil as part of his response to the unsubstantiated claims objection. He later left off of that and did not pursue it. That was over two months ago.

This briefing commenced three months ago. When Mr. Haviland did not say that I could follow him in his argument was any reason why Mr. O'Neil has now become relevant for the first time three months after these objections were put in place. Again, Your Honor, the fact that Mr. O'Neil was deposed in an MDL proceeding two years ago and the proceeding, itself, are not new. They did not become new in our reply and they were not referenced in our reply.

We did not raise alter-ego for the first time in our reply. As Your Honor knows, we have been arguing alter-ego issues before this court for months in the context of estimation, in the context of discovery disputes. It is not a surprise to hear that the debtors want to know whether there is any assertion of alter-ego because that could be a ground on which claimants are attempting to create claims and the as the debtors have said repeatedly believe those to be estate causes of action. That is patent in the record for months. So that is not new.

The single document about Mallinckrodt Pharmaceuticals Ireland Ltd., having decision making

authority also is not new. The point of putting in the reply was to demonstrate that Rockford had it prepetition. There is just nothing new today, Your Honor. There is no reason that has become apparent in the past week for a need to depose Mr. O'Neil in the context of these proceedings.

If Mr. Haviland felt that he needed Mr. O'Neil to defend his claims he had that need three months ago and the time to argue about it was three months ago. He didn't and he never asked for it. Today is the day of the hearing on the objection. It's just inexcusable to be raising it at this stage.

As I said at the beginning, Your Honor, that is exactly the same for the RFP's. We gave the discovery after discovery discussions before Your Honor that was ordered and we have not heard for months that there is anything insufficient about it. The new request is for, literally, every document that exists relating to Acthar for all time among thirty-three separate entities. It is not targeted at all. It is just an attempt to disrupt.

These are both just attempts to disrupt and they should be denied. The argument can proceed today and at the close of today's hearing, if we can finish today, the record and the argument on this proceeding should be closed. It's been going on for three months.

THE COURT: Alright, well the only issue before me

today is the issue of whether or not the proofs of claim filed by the ad hoc group and the insurance group of Acthar claimants complies with the code, the rules, and the Third Circuit's ruling in Allegheny. As Mr. Murtagh pointed out, I did give leeway on taking discovery with regard to these claims, as Mr. Haviland pointed out, to follow the money and see where that took them.

The issues about whether or not -- well, let me back up. I allowed that discovery because I was under the impression that the Acthar claimants were going to seek to amend their proofs of claim. For whatever reason they decided not to do theat. So the only thing I have before me today are the proofs of claim and the only thing I'm going to rule on today are whether or not those proofs of claim, as written, state facts sufficient to allege a claim against the debtors against whom those proofs of claim were filed.

I am not going to get into whether or not there is other evidence that might have been used to -- that could have been included in those proofs of claim because, again, there is no motion to amend, so there is nothing for me to decide on that issue. The only issue -- again, I am going to make this very clear, the only issue before me today is are the proofs of claim, as written, sufficient to state a claim against the debtors against whom those proofs of claim were filed.

This discovery may go to the question of whether or not there could be an amendment to those proofs of claim, but that issue is not before me. So we're going to get to -- I'm going to set this motion aside for now. We're going to go to the underlying merits of the only substantive issue before me which is the proofs of claim and we will go forward from there, then I will make my ruling and we'll see whether or not the additional discovery might be allowed somewhere down the road. For now that issue is moot as far as I am concerned.

MR. MURTAGH: Understood, Your Honor. Based on your instructions just now do you mind if we take a moment or two just to confer among our team on how to proceed?

THE COURT: Yes. We will take a ten minute recess. We will reconvene at 10:05.

MR. MURTAGH: Thank you, Your Honor.

(Recess taken at 9:53 a.m.)

(Proceedings resumed at 10:05 a.m.)

THE COURT: We're back on the record. Mr. Murtagh, are you ready to proceed?

MR. MURTAGH: Yes, Your Honor. I will go ahead and turn the podium over to Mr. Harris.

THE COURT: Mr. Harris?

(No verbal response)

THE COURT: Mr. Harris, can you hear me?

MR. MURTAGH: Can you hear us?

(No verbal response)

MR. MURTAGH: He may have lost audio. Let me send him a text.

MR. HAVILAND: Your Honor, before we begin, may I be heard?

THE COURT: On what?

MR. HAVILAND: On the issue that came up toward the end of the last session, the issue about leave to amend. I am only offering a potential solution to a protracted hearing today. In our brief, at Docket 2529, we requested leave to amend at Pages 15 through 18. We would be willing to forego any examination of Mr. Welsh today if the debtors would agree to the admissibility of the documents that were produced and that are part of our file.

That would, at least, make the issue more acute for the court. Of course, those documents are not attached to our proof of claim; only the complaints were. We do point out in our opposition to the objections we're seeking leave to amend through this process to put the factual detail before the court. I'm suggesting that that is a way to short change today not to take away anyone's ability to present evidence, but I am going to suspect that Mr. Welsh hasn't seen a number of the documents and the examination is going to be lengthy.

If the debtor is amenable to the admission of those exhibits they're in the court file and we can move onto the next issue of whether or not (indiscernible).

THE COURT: I'm not sure if Mr. Harris heard all of that.

MR. HARRIS: I'm sorry, Your Honor, I was having audio problems. I apologize, I did not.

THE COURT: Mr. Haviland, do you want to repeat that?

MR. HAVILAND: Sure. I'm sorry, Chris, I didn't realize you were out. Mr. Harris, I just said to the court that as a point of order, based on the court's observations of the issues before the court today in terms of the existing proofs of claim, the existing proofs of claim, as everyone knows, at least for the ad hoc Acthar group, consist of an addendum which describes the claims, a complaint which talks about the conduct of the named defendants, the PLC and ARD, and unnamed co-conspirators and others, then it provides, as Exhibits B and C, the damages claim and the actual proof that the claimant is included in the claim within the complaint.

None of the exhibits that we're about to examine Mr. Welsh on, as a corporate designee, are included in the proofs of claim. It seems to me the court has framed the issue, and I'm not suggesting that Judge Dorsey has done anything other than set the pace of play for today, we have a

number of exhibits, as you can see from our exhibit list, that are not in our proofs of claim. The issue is whether they should be and if so when.

In our opposition brief I just pointed out that its filed May 21st at Docket 2529 beginning on Page 15 of 19 we say leave to amend the proofs of claim should be granted. We cite Federal Rule of Civil Procedure 15(d), we cite cases in the Third Circuit and the District of Delaware that leave to amend should freely be given. That was two months ago. We haven't gotten leave to amend and we would like leave to amend. And we are willing to forego any examination of Mr. Welsh today provided that the debtors agree to the admissibility in this record today of the documents that we put in that are Mallinckrodt documents that were produced either in the context of the bankruptcy, which most of them are, or some which come from the underlying Rockford file and that is why they haven't made publicly available.

This is going to be a long hearing today. It seems to me that that is the issue before the court whether or not leave to amend should be granted.

MR. MCCALLEN: Your Honor, may I be heard on that briefly?

THE COURT: Your cross talking here. Who -- let me -- was it Mr. McCallen? Go ahead.

MR. MCCALLEN: Thank you, Your Honor. I think it

might make sense for me to go first as the other Acthar private -- private Acthar plaintiff here and then maybe Mr. Harris can respond to both of us if that works for you, Your Honor.

THE COURT: That's fine.

MR. MCCALLEN: So I guess with regard to the statements that Mr. Haviland just made, you know, from my perspective, Your Honor, we might get some day to the question of whether or not leave to amend should be granted. That is leave to amend the pleadings, but I don't think we're there yet.

You know, I think, Your Honor, a little bit of a history here might put some context and be helpful at least with respect to my clients. You know, when we filed our claims in this bankruptcy proceeding we did so without the benefit of any discovery in this case or in the prepetition litigation.

Humana, which is one of my clients, filed its lawsuit in 2019 and it had no significant discovery in that case at the time that the bankruptcy cases were filed. I think that, in fact, Humana's motion to dismiss was decided in Mallinckrodt. It just answered, literally, a couple weeks before the bankruptcy petition in this case.

It was really part of these cases that information that Mr. Welsh testified to at his deposition, in which I

think you will hear about today, started to come to light. You know, as Your Honor recalls, on the same day, April 30th, we filed a motion to estimate. The debtors filed this claims objection; what they style the unsubstantiated claims objection. Your Honor, I am going to have a lot to say about what that means in the context of Allegheny. I think Your Honor is spot on whenever you said Allegheny governs here. I think they're way out side of it in terms of the second and third prongs of Allegheny.

With regard to the first prong of Allegheny, Your Honor, the -- when we filed those cross motions, you know, the debtor said your claims are unsubstantiated. There is -- you have cited no evidence against these specific boxes and we basically said at that point everything we know we have either learned about from public filings which was very little, frankly, or we had got pursuant to a very restrictive NDA at the outset of the case.

So we said to them, okay, fine, you're putting an issue -- the claims, you know, we served them with discovery. I'm not going to belabor the history there. Your Honor remembers. We were in front of you on a 30(b)(6). My colleague, Mr. Freimuth, was in front of you asking for discovery on our estimation motion. You know, the debtors pushed back and they said, no, we can hear this issue, this unsubstantiated claims objection on just this limited factual

record.

I believe then and I continue to believe now it was an exercise and artificial line drawn, Your Honor, because you just can't disentangle the issues about corporate structure that they offered Mr. Welsh for and that we deposed him on from questions about did something wrongful happen and if so where it happened.

So from our perspective, Your Honor, you know, all of those issues are tied together. We now find ourselves three months into this process and, candidly, exactly where I was afraid we would be when we started this which is we have this factual record which we are prepared to move forward on today and, you know, cross-examine Mr. Welsh. I'm sure the debtors are prepared to move forward and give the direct examination of Mr. Welsh.

Candidly, I think, Your Honor, whenever you look at the governing law not only Allegheny, but when we get to the evidence, Your Honor, about the second and third prong of Allegheny as well as the Copperweld and other cases you're clearly going to see today, just even on the limited record that we have put together for Mr. Welsh, that our claims would withstand a motion to dismiss and they withstand, from an evidentiary perspective, whatever it is that the debtors are putting forward with this unsubstantiated claims objection. That is what I won't get into right now. I do

want to talk about it later because it's not clear to me exactly what it is.

I guess what I am trying to say, Your Honor, is I didn't get a chance to confer with Mr. Haviland on the break, We will, obviously, seek guidance from Your Honor and proceed in a way that Your Honor thinks is effective in light of the way Your Honor is seeing the pleadings thus far, but we are prepared to move forward with the evidence today.

I think we are going to do enough today that's going to get Your Honor comfortable that our pleading survives whatever this unsubstantiated claims objection really is.

THE COURT: Well here is the problem I have with your client's proofs of claim, Mr. McCallen; they filed them and they include a footnote that says we're filing these out of an abundance of caution because we don't actually know whether we have claims against these debtors and we think discovery in the future will show that we do. That is not how the claims process is supposed to work.

What should have happened here is as soon as this case was filed and certainly as soon as the bar date was set back in March -- no, when was it set?

MR. HARRIS: The bar date was in February, Your Honor.

THE COURT: The bar date was in February. I

entered the order in, what, October? November 30th I set the bar date order. The bar date was set for February, so you had 78 days. The way the process is supposed to work in bankruptcy is if you're not sure you have a claim against a debtor then you seek 2004 discovery to find out if you do, but neither one of the groups of Acthar claimants here decided to do that, for whatever reason. Instead, they just filed blanket proofs of claim against every single creditor -- excuse me, every single debtor in the corporate structure not knowing whether they had claims or not.

I got a problem with that. I got a huge problem with that. I think its bad faith. I also have a problem with the fact that folks actually filed these proofs of claim under penalty of perjury not knowing whether they had a claim. So those are the issues that I have with this whole process. The proper procedure was not filed. It could have been and you didn't do it.

So having read these papers, having looked at the proofs of claim I will tell you exactly where I am on this. My view is all of these claims should be dismissed. If you want to say, well, we want a leave to file a late claim then you can file a late claim and I will decide it then under the Pioneer factors the Supreme Court set forth for excusable neglect because you had the time to do your investigation, you had the time to request 2004 discovery to find out

whether you actually had claims against these particular debtors and you chose not to do it.

I see that as gamesmanship. I see that as let's put pressure on the debtors by bringing claims against every single debtor in the corporate structure, including the generic side and the specialty side, because that is going to screw up the debtor's plan of reorganization.

So that is where I am on all of this. So you are going to have to convince me otherwise today. And I don't need to hear the evidence as to whether or not there is claims against these debtors. I want to know why you didn't seek 2004 discovery, why you didn't seek to amend.

Mr. Haviland, I don't think saying you want leave to amend in your response to the motion is sufficient because there are specific requirements for a motion to amend that I have to make rulings on and it's not in the papers.

Mr. Harris, what is your position? Go ahead.

MR. HARRIS: Thank you, Your Honor. That is exactly our view of things. With your helpful guidance that the issue before the court is what we said it was which is whether the proofs of claim, as written, substantiate claims against the non-debtor defendants and there is not a need for an evidentiary hearing for that. I don't know if the claimants are implicitly conceding as they seem to be that as written they do not substantiate a claim. If so we could

probably just go forward to a ruling on dismissing them.

If they do still dispute that then I would suggest we have oral argument on whether the claims, as written, substantiate a claim. I think it will be abundantly clear, maybe not, that that's the issue of the parties. No one has moved to amend and so that is not before the court.

If and when they file we will respond, but our view is we will be able to defeat that. It is extremely prejudicial for them to have laid in wait and to raise a new amended proof of claim later so close to confirmation, but that is not an issue Your Honor has to decide today. As you said today all that is before you is those proofs of claim as written and we are happy to argue that if they are still disputing that they are sufficient on their face. If not, you know, the court understands the issues.

THE COURT: Mr. Haviland, you raised your hand.

MR. HAVILAND: Your Honor, I'd just like some guidance in terms of whether we should file a formal motion on the heels of the May 21st request. I have been practicing in the Federal District Courts for 31 years and when there is a motion filed, motion to dismiss under Rule 12, which is what I deem the objections to (b), they cite Twombly and Iqbal even though I agree the Allegheny standard applies and is not the same level of pleading (indiscernible). That is how I read the cases.

I didn't think that we needed a formal motion when we moved to dismiss with the alternative request leave to amend. The debtors responded in their reply, a week ago, to say leave should not be granted. I would just like to know, if the court is inclined to tell us today, should we file a formal motion.

I don't agree with Mr. Harris that we have conceded that the proofs of claim that we filed in some thirty branded debtor cases, Judge, and we tried to be very careful and judicious about the claims we filed and we did not file on all sixty-four cases. I think the court will see that. We did not file, at least to my knowledge, any claim against any generic company that is clearly a generic; SpecGx being the obvious one.

We did file as to entities that were at a time part of the brand business, Mallinckrodt LLC for instance, Mr. Hillmer signed contracts. So we tried to be very careful and deliberate about claiming on the brand side business because our view, Your Honor, is when Questcor and Mallinckrodt merged in August of 2014, and it was not an acquisition, it was a merger 50.5 percent of the shares went to Mallinckrodt shareholders, 49.5 went to Questcor; two companies became one. Later this ARD subsidiary was stripped of its assets and found to be insolvent internally back in 2018. The rest is just the maneuvers of the corporation with

respect to its subsidiary. We think they are just divisions.

To me, Your Honor, that is just a question of facts that can be decided on the papers. Mr. Welsh certainly has a lot of knowledge about the reasons why those things were done for tax purposes, but doesn't have a lot of knowledge about the functional aspects of it which is why we asked for the witnesses we did.

So I am speaking at length here to find guidance as to whether or not a formal motion at this point should be filed today in which case we will do it so that the issue can be brought to the floor and the court can rule on timing, substance, any issue that goes into what was done back on February 16th, what was done in the context of the April 30th objection and the May 21st response.

It seems to me that the parties are coalescing around an approach that the documents are the documents. That is why I made the suggestion, and I'm glad we're discussing it, because we can probably short change the hearing at length by not having to ask Mr. Welsh a number of things he doesn't know about documents he hasn't seen. Then the court can rule on the papers in terms of the proffer.

Given where we are I can't leave the fact that we've made a request for leave to amend two months ago and if it's a formal motion that's required, even though there's been a response, then we will file that so that the court can

clearly see that that is set for a hearing date and we can decide that because we will certainly put more information in the motion to give the court context based on discussion about the timing and all the material we received in the wake of the court's ruling on a motion to compel.

THE COURT: Mr. McCallen, do you have a response?

(No verbal response)

THE COURT: You're muted, Mr. McCallen.

MR. MCCALLEN: Sorry about that, Your Honor. I do have a couple points. Your Honor, thank you for the guidance at the outset of the hearing. I do always think it's instructive and helpful to understand where the court is viewing issues at an early stage of the case.

I do want to make a couple points because having heard what Your Honor said I want to let you know why we are where we are from our perspective so you understand. I hope that we are here in good faith.

The -- this goes to the point that we, sort of, laid in wait to see what would happen. Your Honor, we tried extensively during these cases and on many occasions to get information from the debtors informally. That did not -- we do not always get what we wanted when we wanted it. In fact, we did not get the level of information we thought we needed. We also -- as you know, the UCC was pursuing a Rule 2004 request. We joined in that request and, you know, in

retrospect, Your Honor, in light of what Your Honor has said today perhaps we should have been more aggressive in bringing to the court what we felt was informational stonewalling by the debtors.

Having heard what Your Honor said today I think that that is something we would have done if we would have known then the way Your Honor was going to view this issue now. You know, the reality is that we largely learned about these entities upon the filing of bankruptcy cases. Your Honor, we really learned, for the first time, that, from my perspective at least, on April 30th whenever the debtors filed this objection that, really, this kind of box by box level scrutiny was going to be a basis to attack our claims.

Your Honor has to recall, and this is in Mr. Welsh's first day declaration he talks about this, the reason that the company filed for bankruptcy they had an opioid settlement on the generic side of the business and then they had certain liabilities, Acthar related liabilities coming on the brand side. It was that that led them to file the specialty brand side of the business; not just PLC and ARD, they filed the entire specialty brand side of the business.

So from our perspective, you know, Your Honor, we -- in pursuing these claims we thought, you know, I think at the filing of the bankruptcy the expectation among people on our side of the case was ARD and PLC, you know, these are the

main entities and maybe some of these other ones are, sort of, related, but that is sort of where the conduct took place, but, in fact, it turned out, Your Honor, that ARD and PLC are a very small part of the story and other entities are a larger part of the story.

So, you know, that is just background, Your Honor, that I wanted to try to put that on the record to address Your Honor's comments about how we got here and, you know, the procedure around what we did and whether we brought our plans in good faith.

In terms of next steps, Your Honor, I actually think it might -- I know the last thing we want to do is start with another break, but if we're going to do anything other than proceed the way that I think we all envision, which is opening statements, short opening statements followed by Mr. Welsh and cross, followed by closings, I would like the opportunity to confer with my colleagues. I think there has been a lot of information here that has been conveyed from the court to the parties. I think I would like an opportunity to absorb that and discuss it with my clients if that is possible.

THE COURT: Alright, let me hear from Mr. Harris first.

MR. HARRIS: Thank you, Your Honor. Again, our view is there is not a need for an evidentiary hearing at

this point. The issue is what do the proofs of claim say and assuming the facts are true did they substantiate a claim against each debtor against whom it was filed. That can be determined on the basis of pleadings, the proofs of claim, and the law which is in the briefs. We're happy to go to oral argument on that.

In terms of a few points that were made the ad hoc group did not move (indiscernible). What they said in a motion to dismiss is that in the future they would seek leave to amend at some unspecified point when unspecified discovery is completed and I don't even know what that amendment would be because they didn't file an amended proof of claim. So the thought that they had actually moved to amend in some unspecified way at some unspecified time is just not accurate.

In terms of Humana they have not sought leave to amend and Attestor. I actually received hundreds of thousands of documents prepetition. They received millions of documents in the bankruptcy. They saw pleadings in the bankruptcy filing case in the early stages that indicated the ownership of IP, the licensing structure, many things, all of which would put them on notice as to what entities are involved. It had gotten the entire Acthar production, the prepetition lawsuit, which is millions of pages and they have all the facts currently about Acthar entities do what. In

fact, they stipulated with us that they would rely on the facts in their reply brief in exchange for us not pursuing further discovery from them. And despite that they chose not to amend.

The idea that you just heard that somehow respecting corporate formalities and limiting each corporate entities liabilities to its own liabilities was a surprise to them. They view that that was somehow surprising to them is incredible. That is the foundation of corporate law. It is the foundation of how Chapter 11's are run. The thought that this did not occur to them until they saw our omnibus objection that they would have to substantiate a claim against each entity is just not credible.

So at this point we would propose that we go to oral arguments on whether the proofs of claim as written substantiate unless the court views that it does not need the argument because the paper are sufficient.

THE COURT: Thank you, Mr. Harris.

Mr. Haviland?

MR. HAVILAND: Judge, one final point and it's what I started with. We do have a substantial record that we supplied to the court and the parties and that is now before the court. I can't let Mr. Harris's comment about some stipulation to rely upon what was in the papers go unanswered. We did not -- we, the ad hoc Acthar group, did

not make that agreement. I know counsel is aware of that.

They had asked in exchange for agreeing not to take our client's depositions, which I pointed out to the court, (indiscernible) was deposed just the other day. We put our clients up. And so we did not make any agreement that we would rely upon simply the response papers because there is more to it than that. And whether the court is going to go forward with an evidentiary hearing or some other vehicle to get these issues properly framed and before the court we're not resting on our opposition to the objections without making that substantial proffer of those exhibits.

THE COURT: Mr. McCallen, in your papers you actually state flat out that you were going to -- after discovery was completed you were going to make a determination and work with the debtors to see whether you could dismiss the claims against the generic brand debtors. Have you made that determination?

MR. MCCALLEN: I think what our -- we have not yet, Your Honor. The short answer is we have not. To the point that Mr. Murtagh was making earlier there has been no further discovery on this motion after the deposition of Mr. Welsh.

We have documents from the debtors that represent which those entities are and we would, you know, like the opportunity, as we anticipated doing during discovery, is

taking further discovery, confirming the fact that the generic side is the generic side, the debtors -- the specialty brand side is the specialty brand side. Then we're going to dismiss those generic claims.

We have no -- we have been very clear about that. The debtors have also, you know, not reached out to us to say, well, let's talk about how we can do this. So, Your Honor, we haven't had that conversation with them. I do think we would want some more confirmatory discovery, but it is our intention to do that, Your Honor.

THE COURT: You see that's another problem because you have had months do that and I don't understand why you haven't. The only reason I could think of as to why you wouldn't is for hold up factor because you're holding up the debtor's proposed plan of reorganization by maintaining claims against the generic side without any basis for knowing whether you -- you've had months to take discovery on that issue. I am just really frustrated with where this process stands.

Mr. McCallen, I am going to give you the opportunity to take a break. I am not going to hear any evidence today. I don't think I need to. I will hear brief arguments as to why, as written, these proofs of claims should not be dismissed or whether or not I should grant leave or grant leave to seek leave to amend because I'm not

going to grant leave to amend based on the record I have before me. We will take it from there. That is what I want to hear about when we come back.

So let's take -- let's recess until -- how much time do you think you will need, Mr. McCallen?

MR. MCCALLEN: Ten minutes should be fine, Your Honor.

THE COURT: Alright, well let's take a little bit longer. Let's recess until eleven o'clock.

MR. MCCALLEN: Thank you, Your Honor.

(Recess taken at 10:35 a.m.)

(Proceedings resumed at 11:05 a.m.)

THE COURT: Alright, we are back in the record. Mr. McCallen, did you have an opportunity to discuss the issues and do you have anything to add?

MR. MCCALLEN: No, Your Honor. I think in light of the court's guidance we would proceed directly to argument. I don't think there's anything further that we need to discuss at this point.

THE COURT: Alright, so the argument that I want to hear is do these proofs of claim, as drafted, allege facts sufficient to establish a claim against the debtors against whom those proofs of claim were filed. If they do not is the proper way to proceed to dismiss those claims or is it to grant leave to amend those claims?

So with that, Mr. Harris, you raised your hand.

MR. HARRIS: Thank you, Your Honor. I will address those two points in order. I will first talk about why each challenged claim should be disallowed under the first step of Allegheny and then I will talk about why that disallowance should be with prejudice given where we are in the case today.

So I don't believe this first question is difficult. Under Allegheny which governs here, no one disputes that, before there is a *prima facie* valid proof of claim, so in order to assert a *prima facie* valid proof of claim the claimants have to satisfy the first step of Allegheny which is,

"The claimant must allege facts sufficient to support the claim."

That is the standard and that also means that the factual allegations in the proof of claim there must be allegations of specific wrongful conduct attributable to the debtor in question and we cited several cases applying that standard to disallow claims. It was the In Re Tribune case, the Hilton v. Hongisto case as examples.

So just attaching a prepetition complaint to a proof of claim, if the complaint doesn't allege any facts about that debtor does not satisfy the standard. There is no magic to the words of calling something a complaint. The

complaint actually has to say something about the debtor against whom the claim is filed.

The main case that the claimants rely on, F-Squared just confirms that. I am going to quote it,

"Multiple courts and commentators also require that a proof of claim allege facts sufficient to support the claim. A reviewing court will assume the allegations are true and ask whether the facts established are the necessary elements of a claim."

That's F-Squared, that is what Allegheny says. So you look at what are the facts alleged in the proof of claim.

Here, the challenge proofs of claim, including all the facts in the complaints appended thereto, fail that threshold. So the issue isn't assertion of facts. It's not about whether they documented or proved those facts. For today we're assuming they have.

So here is where we are, there are zero facts asserted against each of the non-defendant debtors, no facts at all. I heard -- I saw in the briefs two responses to that. One is that there is a small set of proof of claims, in particular those that were filed by United Healthcare and Optum RX, claims that Attestor has now bought, that define Mallinckrodt to include every debtor, but that is just impermissible group pleading. It doesn't satisfy the obligation to allege facts about the specific against whom

the claim was filed.

We cited several cases to that effect in our brief including In Re Frohoff [phonetic], In Re Conex Holdings, and In Re PennySaver. Notably, the claimants don't cite any case saying that it's sufficient to make a group pleading against 60 defendants together because there are no such cases. It also violates the requirement that a proof of claim must clearly identify the debtor and make a demand specifically against that debtor. That is the (indiscernible) case we cite.

So clearly those couple of proofs of claim that just lump 60 debtors together and make statements about Mallinckrodt's generics they are not sufficient. The only other defense to the wording of these proof of claims that any claimant makes is that their proof of claims refer "unnamed" co-conspirators. That is insufficient for at least three reasons.

First, the reference to an unnamed co-conspirator is not a reference to the non-defendant debtors and that is because a corporation can't conspire with its own affiliates. Copperweld, the case that Humana and Attestor rely on and that you heard the ad hoc group mention as well, confirms that. You cannot conspire with your affiliates.

Second problem with this argument is that even this -- even if this was supposed to be a reference, the

unnamed co-conspirators were supposed to be a reference to the non-defendant debtors the failure to actually name them is a failure to properly identify them and, thus, violates the requirements that a specific debtor be individually identified. We cited the Springer case to that effect and we cited others as well; Smith v. Department of Corrections New Jersey, and In Re PennySaver.

The third problem with this argument about the reference to unnamed co-conspirators is that even if the proofs of claim had actually said that the particular debtor was a co-conspirator that would still not be nearly enough because all that is, is a legal conclusion. That is not a factual allegation.

We cited several cases holding that, for example, Bell Atlantic v. Twombly, "A bare assertion of conspiracy will not suffice." (Indiscernible), Third Circuit case. It is, "Not enough for a complaint to simply make conclusory allegations of concerted action, but be devoid of facts actually reflected in a joint action."

The In Re (indiscernible) Group antitrust litigation which hold that an antitrust complaint "Fails to adequately plead the existence of a conspiracy where plaintiffs never state that any or all of the defendants have joined the actual conspiracy. That case also noted that in the City of Rockford case against ARD, so the actual case the

ad hoc group brought pre-conspiracy,

"Plaintiffs conspiracy claim was dismissed for conclusory pleading against an unidentified co-conspirator where the complaint contained scant mentions of the co-conspirator in its role as a part of the dealing arrangement."

So it is Black Letter Law that just saying someone is a co-conspirator is insufficient. So that is not a defense to these proofs of claim either. So because the private Acthar plaintiffs did not meet their initial burden under the first step of Allegheny their proofs of claim never achieved validity, you never get to the second or third steps of Allegheny and the claims should be disallowed.

I do want to, just to confirm that, make some general points of law that support this. These are all in our brief.

First, the fact that the non-debtor defendants are affiliates of ARD and PLC does not create liability in any way. That is Black Letter corporate and bankruptcy law. We cited several cases for that. In Re HH Liquidation, that's a Bankruptcy District of Delaware, it is axiomatic that parents and subsidiary corporations are separate entities having separate assets and liabilities; hence, the parent's creditors have no claim for the subsidiaries assets and vice versa. We also cited In Re Regency Holdings, Southern

District of New York bankruptcy case,

"A part seeking to overcome the presumption of separateness must pierce the corporate veil or prove the two entities should be substantively consolidated."

So a corporate entity is liable only for its own debts and its own (indiscernible). To the extent that the claimants here are trying to articulate theories of alter-ego or veil piercing those are estate claims, they cannot be a part of the proof of claim of an individual creditor against an estate. We cited several cases to that effect; Emerald, In Re Buildings by Jami [phonetic], In Re Tronics. So the fact that they are affiliates is not enough.

Specific to the actual claims that they have raised that is true as well. If you look at antitrust law, and we cited several cases to this effect, you know, Attestor and Humana seem to be relying on a theory that asserting claims against one member of the corporate enterprise is sufficient to establish antitrust claims against the rest of the corporate enterprise. That is completely wrong. It is a deep mischaracterization of the cases that Attestor actually cites which instead votes the plaintiffs are required to show that each defendant independently participated in an enterprise scheme.

So if you look at the main case they rely on, Copperweld, it actually rejects intercorporate liability

under Section 1 of the Sherman Act,

"If a parent and a wholly-owned subsidiary do agree on a course of action there is no sudden joining of economic resources that it previously served different interests."

Courts can uniformly reject it, Attestor's argument, that under Copperweld the plaintiff does not need to allege the anti-competitive actions of each separate corporate defendant. We cited several cases to that effect; there's the In Re Insurance Brokerage Antitrust Litigation Third Circuit case,

"Contrary to plaintiff's suggestion it does not follow through Copperweld that subsidiary entities are automatically liable under Section 1 for any agreements which the parent is the party."

We also cited (indiscernible), Tenth Circuit case where the plaintiff sought to extend Copperweld to hold parent and sibling entities as one reliability even when there is no evidence that each were involved in the challenge conduct. The court rejected this. So it is the law in the antitrust liability. It is that the plaintiff must allege facts that each defendant independently participated in any alleged antitrust scheme.

We cited the Lennox case for that. All these are cases that Humana cite. The Lennox case said that Lennox was

still required to come forward with evidence that each defendant independently participated in the enterprise scheme to justify holding that defendant liable as part of the enterprise. Arandell, the Ninth Circuit case,

"Copperweld does not support holding a subsidiary liable for the parent's independent conduct."

That is with any antitrust defendant plaintiffs must report evidence that CES, a particular defendant, engaged in competitive conduct. Or the Insurance Brokerage Antitrust case Third Circuit again where,

"Defendants are not plausibly alleged to have, themselves, entered into unlawful agreements. The antitrust claims against these entities must fail."

So that is the law. They have to allege facts that each defendant engaged in anti-competitive conduct. These proofs of claim allege nothing about the anti-competitive conduct of each of the debtors that they are filed against. And it's not surprising because of that because there are only two types of anti-competitive conduct alleged; the 2013 acquisition of Synacthen and the exclusive distributorship arrangement with (indiscernible). There is no allegation in the proofs of claim that any of the non-defendant debtors engaged in either of those activities. In fact, both of those activities started before Mallinckrodt even acquired Acthar, acquired Questcor. So it's not

surprising that there are no allegations that other Mallinckrodt entities were involved in these.

Antitrust liability, the same thing is true for RICO liability. The cases are clear you have to allege that each defendant, each debtor independently engaged in a racketeering activity either by conducting it or directing it. That is the reason the (indiscernible) case, the Supreme Court case 1993,

"It is clear that Congress did not intend to extent RICO liability under 1962(c) beyond those who participate in the operation or management of an enterprise for pattern of racketeering activity."

So the cases are very clear that just associating or doing business with a related entity is insufficient to create RICO liability. That is the In Re Insurance Broker Antitrust case again,

"Mere association with an enterprise does not violate 1962(c)."

Likewise, we cited cases saying merely providing goods and services that benefit the alleged RICO enterprise is not liability. That is University of Maryland v. Peat Marwick case, Third Circuit, and the James Streibich Revocable Trust case. Likewise, we cited cases saying merely receiving revenues that are derived from a RICO scheme is also not enough for RICO liability. That is the James

Streibich Revocable Trust case again where it granted a motion to dismiss where the plaintiff provided "nothing to suggest that wholly-owned corporate defendants were anything more than pass-through vehicles for funding."

Likewise, we cited the Lerner v. Colman case which found that an alleged rule consisting of "passive reception of fraudulently acquired stock and promissory notes did not constitute RICO liability." We also cited cases that just providing a license that someone else uses in racketeering activity is not enough. That is the Goran case. Then we cited cases that provided financing is not enough, that is the (indiscernible) case, "Passive financing arrangements are insufficient to give rise to liability."

And the same thing is true for unjust enrichment. I make just two points about that. First off is the extent that there is any unjust enrichment claim that is cognizable in the proofs of claim, it is a disguised alter-ego veil piercing claim that somehow value has flowed up to, I guess, all debtors somehow and, therefore, the claimant should be able to access that value wherever it went. That is just a disguised veil piercing claim attempting to disregard corporate formalities.

We cited several cases saying that unjust enrichment cannot be used to nullify corporate separateness without satisfying the elements of alter-ego and veil

piercing. That includes the QVC case which is a Third Circuit 2016 case. We also cited In Re Citizens and Bank of New York Mellon. And because they are really just alter-ego and veil piercing claims claimants cannot put them in their proof of claim. They are not a valid claim against these entities.

The second problem with these is that even if they had standing to bring them an unjust enrichment claim also requires conduct by the actual debtor. Even if it doesn't require wrongful conduct it does require that the defendant, itself, engaged in conduct and that that conduct had a direct relationship with the plaintiff's loss. We cited the Shubert (indiscernible) case, New York Superior Court 2020,

"There must be a causal connection between the plaintiff's claimed loss and defendant's actions."

We also cited Betty v. BMW, (indiscernible), and the Kagan [phonetic] case. So unjust enrichment as well requires an allegation of conduct by the defendant and that that conduct directly caused the plaintiff's loss. Here there are no facts alleged as to any conduct by the non-defendant debtors.

So where does that leave us? Clearly on their face these claims do not substantiate a claim against the non-defendant debtors. They should be disallowed. So the real issue is whether that disallowance should be with

prejudice. We argue it should because there is no excusable neglect here for the failure to properly file proofs of claim or, at least, amend them by now. It would be highly prejudicial to allow an amendment now so close to confirmation, so disruptive to do that now.

So the courts apply an equitable test focusing on prejudice, delay and bad faith to determine whether to permit a proposed amendment after the bar date. So we cited In Re Exide and In Re Brown. Prejudice is the most heavily weighted factor of this. Here there is no excusable neglect for failure to have filed a proof of claim or, at least, amended them by now. They certainly would be highly prejudicial.

Let me just review the facts for the court. Prior to the bar date both sets of claimants were aware of, at least the material facts in the case that other -- that other entities had some role if they wanted to substantiate those claims.

In terms of the Acthar claimants they were given over one million documents in prepetition discovery, fifteen depositions including many documents that described the role of other Mallinckrodt entities. They had documents and we attached those documents to our brief including slides that showed that MPIL was the contracting entity for Acthar management, that other entities owed the IP and engaged

licensing agreements. We showed there were attached documents indicating that MPIL approved the strategic plan, documents indicating that MPIL was involved in setting the price for Acthar. Humana received several of those documents as well prepetition.

In addition, there were bankruptcy filings in this case before the bar date. The IP restructuring motion, which is Docket No. 385, was filed in November 2020 showed the Acthar ownership and licensing structure as of the bar date; in particular that Mallinckrodt ARD owed the Acthar related IP, that it licensed it to Lux IP S.a.r.l., sub-licensed it to MPIL which then owed Lux IP S.a.r.l. licensing fees. Those are the facts that I imagine they would try and amend. Those are the key facts they were aware of the bar date whether they paid attention to it or not.

Then after the bar date, but well before this hearing, we provided extensive discovery to both sets of claimants. Millions of pages of documents, all the data that is needed to establish the Acthar related conduct of each of the non-defendant debtors and they chose not to amend. So there is not excusable neglect for failing to file a proper proof of claim or, at least, amending it before this hearing.

It would also be highly prejudicial to allow that amendment now. It would be a hugely wasteful and inefficient use of the party's resources and the court's resources. We

have a hearing today. This motion was filed three months ago. We have already extended the hearing date twice to allow them to conduct discovery and incorporate those facts wherever they chose to be. It would be hugely wasteful to the estate and the court to repeat this whole process later.

It would also be extremely prejudicial to allow the claimants to amend later, to string out the claims filing process after the bar date and after this hearing. I'm sure Your Honor remembers we brought this objection in April and we're very clear about why we did this. We did this in order to provide clarity to the estate and the court in advance of confirmations so we would know whether there were surviving claims against other boxes and if so whether we had to conduct an estimation hearing on those surviving claims against other boxes.

If you recall, Humana told you that if we do have to go that route it would be extremely lengthy and timely. They estimate it will take four months for discovery and at the end of trial. We tried to avoid all this by fronting these issues and filing this estimation motion. It would be highly prejudicial for them now, months later, to file a motion to amend which, itself, will take a month to deal with. And if they're permitted to amend then we have a hearing on the legal sufficiency of those amended claims under Allegheny step one. And if any are legally sufficient

then we have to go through an estimation process at that point possibly.

They told repeatedly that they knew that we are somehow the bottleneck, that we have not been providing discovery. They have the discovery. They are the ones who are now slowing down this process and keeping these claims open apparently for leverage purposes. They should have started whenever they needed back at the beginning of the bankruptcy process.

They should have come to court if they were unhappy with the discovery that they had gotten. We repeatedly invited them to do so. They had gotten the discovery that they need. They did not amend the claims. It is way too late and would be highly prejudicial to not just the debtors, but to this entire bankruptcy process for them to amend in the future. So we believe that disallowance of these claims should be with prejudice.

With that I will pause, unless the court questions, to allow my colleagues to speak.

THE COURT: Well, Mr. Harris, if I dismiss the claims, does that give, is it because of the fact that they failed to allege facts sufficient to show that there's a claim against these debtors, is there anything that stops them from then filing a motion to file a late-filed claim?

MR. HARRIS: Obviously, anyone can file a motion.

If it disallowances with prejudice, they would have to satisfy the standard for that. I don't think even if they file a motion for a late-filed claim, they would be able to satisfy it for the reasons I just described. I think the same standards would apply, which is was there excusable neglect, and is there prejudice to the debtors for the late filing. So, I think that issue can be decided now in the context of determining to disallow these claims with prejudice.

But, of course, they could file a motion if they choose to.

THE COURT: Okay. Thank you, Mr. Harris.

Mr. McCallen, I'll let you go first and then I'll go for Mr. Haviland.

MR. MCCALLEN: Okay. Thank you, Your Honor.

Mr. Harris made a lot of points and I'm going to try to hit them, or most of them, as many as I could make note of, and I'll try to do efficiently, Your Honor.

Your Honor, I think Mr. Harris acknowledges in his presentation that really the standard on this motion is that of notice of pleading. The case law is clear that it's not even a 12(b)(6) type standard, but under for a bankruptcy proof of claim, there's actually even a lower threshold.

I don't think they can -- and I don't think they do argue that they're not on notice of the relevant conduct,

because we have a 50-page pre-petition complaint, at least on behalf of Humana, we do, and that's survived two motions to dismiss in terms of, does it allege valid claims under the antitrust RICO and unjust enrichment and other state laws.

It's really a group-leading argument and Mr. Harris alluded to this. So, it's not so much is there sufficient allegations of conduct, but do you have allegations against the boxes for conduct in each of those boxes.

And when it comes to that issue, Your Honor, I think, obviously, the complaint that we've attached to our proofs of claim, it was filed pre-petition, it was before we knew what we know now, so there was just literally impossible for those documents to contain the allegations of the facts that are put in our objection.

But, again, when you come back to the idea of notice, there's really no argument the debtors can make from a pleading perspective, hey, we don't have notice of what you guys think happened. All of the facts that we have were obtained from them via discovery.

They know the corporate structure. They know the divisions, and that gives them argument. Then they made them in their pleading, you know, they made evidentiary arguments and they made other arguments about what that means, and we didn't get to those today, but from a first step of Allegheny

or even, frankly, a 12(b)(6) standard, and I think the debtor unfairly mix them up at times, but under either circumstance, the purpose of that is to give the defendant, or here the debtors, fair notice of the allegations.

And I think when it comes to that, they might have arguments down the road that we can't prove-up those claims, and, again, then maybe there's certain boxes those claims shouldn't be against, but in terms of a notice standard, I don't think they can really make that claim.

And they cited, Mr. Harris cited the F-Squared case, that's F-Squared Investment Management; that's a case from this Court. And what the Court said there, I think is important. The Court said that it's a relatively low threshold that is less burdensome in the federal, civil pleading standard, when talking about standard under proofs of claim, and, again, re-emphasized the fact that as long as a proof of claim provides fair notice and the Court can glean an actionable claim from the complaint, then it should entertain the parties' case.

THE COURT: Well, if the actionable claim in the complaint is against debtors A and B, how does that give notice to debtors C, D, E, F, G, H, I, J, K that there's a claim against them? How does it give the Court the opportunity to know that there are claims against those other debtors?

MR. MCCALLEN: So, Your Honor, I think, and this comes back -- this goes to the other point that I think Mr. Harris was speaking to, which is that the case law construing, particularly on the antitrust side, claims against multiple entities within a single enterprise, and this was the Copperweld case which he alluded to, and then the progeny, I think various circuit courts have now interpreted Copperweld.

THE COURT: Well, then, why didn't Humana, pre-petition, sue all of them? If it's that easy, if it's easy to say if you're in the corporate structure, we can sue you for antitrust liability, why didn't you sue them pre-petition?

MR. MCCALLEN: Well, two things, Your Honor. First, we didn't know about them.

THE COURT: Well, it's a publicly traded company. You could certainly look at their SEC filings and know who was in the corporate structure.

MR. MCCALLEN: In this situation, Your Honor, the level of detail we have here and the additional entities, we did not know that. And, actually, Your Honor, I respectfully disagree, the information we presented to the Court, via our objection, that we obtained through discovery in this case about, you know, the division between holding the IP in a box, that being licensed to different boxes, which are the

ones who make the decisions about marketing, sales, distribution, and, then, you know, funneling that down to ARD and various other facts that we talked about in our objection, that was not public information.

THE COURT: Well, here's the --

MR. MCCALLEN: And I don't think the debtors ever claimed that it was.

THE COURT: Well, here's the problem. It's not included in the proof of claim that's before me. You included it in your objection, but it's not in your proof of claim and you didn't move to amend the proof of claim.

MR. MCCALLEN: Understood, Your Honor.

And I can address the amendment point now or I can finish out on the pleading argument and then move on to that point.

THE COURT: Go ahead. I don't want to interrupt your flow.

MR. MCCALLEN: Sure. Thank you, Your Honor.

So, coming back, I was talking about Copperweld. So, let's talk about what Copperweld says. In that case, the Court held that a parent and its subsidiary cannot be co-conspirators for purposes of establishing conspiracy under Section 1 of the Sherman Act.

I think me and Mr. Harris agree about that. I don't think we disagree about the holding of it. And the

Court explained that the reason for this is that the parent and its related subsidiaries share the same corporate consciousness and have a unit of interest, and as a result, the Court said -- and I'll just use one quote -- the Court said:

"The coordinated activity of a parent and fully owned subsidiary must be viewed as that of a single enterprise."

And what courts that have interpreted Copperweld have said is that the reasoning of Copperweld permit pursuit of antitrust claims, based on the coordinated conduct of multiple entities, functioning as a single enterprise and that in some circumstances, proof about each entity's separate (indiscernible) is not necessarily relevant.

And what I want to say, Your Honor, is that Mr. Harris, I believe, mischaracterizes our argument. They say that we miscite these cases, but I think they miscite us, because we're not saying, and we've never said that an entity can be held liable solely by virtue of their corporate affiliation with other debtor entities. That's not our argument. It's never been our argument.

And all of the cases, and the pieces of Copperweld and Lennox (phonetic), and Arandell (phonetic) and the other cases that Mr. Harris and his attempted pointed you to in their brief and (indiscernible) argument, that's what they're

all saying. They're all making that point, that, hey, just by (indiscernible) of being a sister corporation, that's not enough.

And our point is, we're not saying that's all there is. We think at the end of the day there is a set of core entities, and, Your Honor, I think, you know, this is maybe a good time to tell you how I sort of think that the discovery that we've obtained from the debtors and how the corporate structure works, I almost think of it as a set of three concentric circles. You have the inner-most core of entities that we now know about who are integrally involved in the manufacture or the creation of intellectual property through research and development, manufacture, based upon that research and development, then distribution and sale of that product. And that's about 10 or so entities that fit within that core group of entities that are involved in that concept.

And then, thereafter, you have another set of entities, what I like to think of as sort of a second concentric circle, which are entities that benefited from that or we believe may have benefited from that, because the discovery from that is still ongoing. The debtors are producing documents to us, no doubt, and we're reviewing them as quickly as we can -- there's been a lot of production -- and we are setting depositions to comply with. We haven't

had any additional depositions yet. We've set them to comply with the Court's scheduling order for plan confirmation, but we've been planning to take those depositions in early August.

But we know that a lot of entities benefited from the proceeds of Acthar, which is, by far, the debtors' most profitable and the largest revenue generator for the debtors. You know, when you actually look at the first day declaration, I think in 2019, the year before the bankruptcy petition, Acthar earned for the debtors something just shy of a billion dollars. And when you look at the entire enterprise, Specialty Brands and Generics, their revenue was about $3.1 billion. So, Acthar is a third of this business and it's the reason that they've said that they ultimately put this entire Specialty Brands business into bankruptcy.

And so, this Acthar revenue, once it got taken in through ARD and distributed up the corporate chain, it was used, we believe, for a variety of corporate purposes. It was used to pay down debt. It was used for purposes unrelated to Acthar, and purposes related to Acthar, distributed throughout that very complicated corporate structure.

And, you know, beyond that, Your Honor, I think the third circle of entities are the rest of the Specialty Brands, because like I said, we don't have any intention of

going after the Generics entities. It would be the remainder of the Specialty Brands entities.

And it may turn out, Your Honor, that the some or all of those Specialty Brands entities, at least with respect to our direct claims, putting aside substantive consolidation for a minute, that some of those should be dismissed. But when I come back to that, Your Honor, that is a level of detail and level of interconnectedness among entities that no SEC filings pre-petition anywhere near to describing. And that's what we've been untangling as part of the discovery process.

THE COURT: Well, what you just described to me, Mr. McCallen, the transfer of funds amongst the various debtor entities, that sounds like a fraudulent conveyance claim, which does not belong to you; it belongings to the estate.

MR. MCCALLEN: So, let me address, that Your Honor, because that's one of the points that the debtors made and Mr. Harris made in his presentation just now. And I want to say a couple of things.

First, we are not pursuing alter-ego claims. They keep trying to say that. And every time we look at any entity, they say that's alter-ego. That's veil-piercing. That's not what we're saying.

The same conduct can give rise to multiple

different claims at the same time. There could be conduct about moving (indiscernible) that's between the debtor entities that gives rise to veil-piercing or fraudulent transfer claims, true. But that same conduct can also give rise to other causes of action; for instance, an unjust enrichment claim. That's a direct claim we would have against that entity and that's an equitable claim under state law designed to allow parties to get proceeds that were improperly, or without a valid basis, distributed to other entities.

Now, what Mr. Harris says in response to that is, but there's got to be some level of culpable conduct at that entity, and I have a couple of responses to that. One, and it's kind of difficult, Your Honor, because we're talking, I think, literally, about dozens of entities, but number one, a lot of those entities, I believe are run by the same individuals that are making decisions about the transfers themselves and are involved in the entity that we would view as concentric circle number one. There's incredible overlap here among decision-making among the debtors.

Number two, a lot of the entities that Mr. Harris is going to point out is he's going to say, that's a passive entity. It doesn't do anything. It's just a boxed asset. There's no employees. There's no business operations there.

And for that, Your Honor, I would say that is a

really problematic position for the debtors to take and if the Court were to ultimately adopt it, because what the debtors have done, and, Your Honor, at some point, we ultimately hear the evidence on, this we'll get into this in much more detail, but I think it's important that Your Honor understand.

The two entities that they are saying we can have claims against, ARD and PLC, have very little value relative to the overall value that Acthar provided to the debtors' business. According to their liquidation analysis, they say that most of the value related to Acthar resides in an entity or at least pre-petition it resided in an entity called Mallinckrodt ARD IP, and that's the entity that holds their intellectual property.

And intellectual property consists -- it's not a patent-protected drug at this point, so the supposedly valuable intellectual property consists of research and development about potential use for Acthar, how to make Acthar, things like that. That is a passive entity that has no business praising. It has no employees. It does nothing, other than hold the Acthar IP.

And the position that the debtors are taking that, hey, you need to have actionable conduct at every entity, if that were true in this situation, not only this debtor, but every debtor. This would be a roadmap for every corporation

in America, put your assets in a passive entity that cannot engage in any conduct, because it doesn't have any employees. It doesn't have business operations, other than holding the things that you care most about, and you can't touch it in a litigation.

You can't touch it in a bankruptcy, certainly, but you couldn't touch it in a litigation, according to them, either, because if there had been no bankruptcy and we took discovery and did all this in California Federal Court, they would say, we can't (indiscernible) claims against the entity that holds the IP, for instance, because it's just a passive entity and it didn't do anything.

THE COURT: Well, two observations, Mr. McCallen. One, you quoted to me the Copperweld case, and the quote you gave me was that you have to show coordinated activity between the entities. So, there has to be some activity, even under Copperweld.

Your proofs of claim don't allege any activity by any of these debtors that you've asserted these proofs of claim against, beyond the entity that you sued pre-petition, and, again, you're describing to me fraudulent transfer.

If the debtor set this up so they could funnel the money into a passive entity for purposes of protecting it, perhaps there are claims against them for fraudulent transfer, but, again, that is not your claim; that belongs to

the estate.

MR. MCCALLEN: So, thank you, Your Honor. I have a couple of responses. I think it may be fraudulent transfer. I also believe for the reasons I've stated, it would also be a claim for unjust enrichment. And also, under Copperweld, I think they would be included within a coordinated enterprise.

Because, remember, Your Honor, the structure that was put together was put together solely for tax reasons for the debtors, and the debtors make a lot of that. They say that we're suggesting that the structure, itself, was done some nefarious reasons. That hasn't been our argument now. I mean, obviously, it is later on. We found out through discovery that it was done to protect assets in a certain way, then maybe our view on that would be change.

So, we're not criticizing them for setting up their business in a tax-efficient way, but what we're saying is that when those decisions come down from the top, or at least from the same place, wherever it's coming from in the debtors' organization, because it's the same individuals who are making these decisions -- it's employees of, you know, ST Shared Services that do the work on the tax side for the debtors -- you can't use this structure, which was done for these tax-efficiency purposes, as a basis to when you get into bankruptcy, to shield recovery from creditors.

And, Your Honor, it's not all creditor; it's just certain creditors, and this is a really important point, which when I talk about the leave to amend point, I'll hit on it again, but I want to make it now. It's really important that Your Honor understand, this effectively, the dispute that's between -- Your Honor, this is between -- this is an intercreditor dispute.

When these cases were filed, when the bankruptcy cases were filed, they came in with a deal with the opioid plaintiffs and certain other RSA parties, including the bondholders, and then eventually there's going to be a settlement with the government.

We've been very clear, and I want to be clear about it, again, Your Honor, we are not challenging the opioid settlement, and certainly by having our proofs of claim filed against the Generics entity, we were not in any way, Your Honor, and this is really true, we were not in any way attempting to gum up the works on the Generics side of the business for their bankruptcy.

But, Your Honor, what we are fighting about at this point is the value that's left over and who's going to get it, because under the debtors' proposed plan, you pay the opioid settlement, you pay the Government, and you have a very limited amount left over on the Specialty Brands side, and so you've got to split it up amongst the unsecured

creditors. And the debtors have proposed a plan that gives us claims only at two boxes, whereas the bondholders have claims everywhere.

So, really, this is, effectively, an intercreditor dispute between us and the other Acthar Plaintiffs and the bondholders, about who, on the unsecured side on the Specialty Brands, gets what's left over after you pay the opioid settlement and after you pay the Government. That's what this is really about.

But let me come back, Your Honor, because I just want to make sure I hit any other points that I had. I think I hit everything I had on the pleading standard.

Oh, there's one other thing I wanted to say. Look, Your Honor pointed out the fact that the fact that are in our objection are not in our complaint. I'm not going to fight that. I can't. That was filed in 2019 before we knew those facts but let me talk in the context of if Your Honor feels that the pleading is insufficient, whether or not we should, at this point, be given, granted permission to file a motion for leave to amend.

And I think, Your Honor, it's clear that we should for a couple of reasons. First, when looking at the standards and the factors the courts will consider whenever deciding to ultimate grant a motion for leave to amend -- I understand Your Honor is just asking us now to argue whether

we should be permitted to do so, but I think looking at what the ultimate standard will be is formative for the decision in front of the Court now -- one factor is whether there was a timely assertion of similar claims or demand evidencing intention to hold the estate liable.

And I don't think they can reasonably contest that there was a similar claim filed, such as the one we have here. Obviously, if the Court determines that it's insufficient or inadequate as a pleading matter, that's another thing, but I think what this factor speaks to is, again, this idea of notice, and they clearly had notice of our claim.

Another factor the courts will look at is whether other creditors would receive a windfall if the Court refused to allow the amendment. And I think this goes to the point that I was speaking to a few minutes ago, Your Honor, about whether or not there would be a windfall.

In this situation, whenever you look at the dynamics of the case, like I said, at this point, this isn't about dipping into the pockets of any of those opioid plaintiffs or the Government; this is a fight amongst creditors on the unsecured side about who gets what left over. And so, in terms of prejudice to the debtors, there is no prejudice, Your Honor. This is a pot plan and so, you know, we should be allowed to continue to litigate those

claims.

The reality is, and the equities of this are, and I think the courts also will look at the equities when deciding whether to grant leave to amend, the equities of this are that Humana and the other insurers who have claims in these cases are some of the largest payors into the debtor structure for years. I've talked about the fact that Acthar is its biggest drug, is its most profitable drug.

You know, these entities have paid billions of dollars of claims and if we do have valid antitrust, RICO, or other state law claims, if we do, and that'll be decided later -- I'm not assuming it right now -- but if Your Honor assumes that we do have valid claims, then it is only fair and equitable that we have an opportunity to recover against the entity that holds all of the different assets that those -- that our proceeds supported for all of those years as part of the debtors' Specialty Brands business.

In terms of the question about the reason for the failure to amend and whether it would be equitable at this point to allow us to amend, again, I just want to remind Your Honor of the timing. I mentioned earlier -- I won't go back to it -- but our pre-petition complaint. We got the discovery in this case. We -- Mr. Harris said that we've adjourned this hearing two times, he said, to allow us to take more discovery. That's right in part. We did adjourn

it the first time because the debtors were producing documents, a relatively limited universe of documents that they said was are relevant to this motion, and so we pushed it back a week to allow us an opportunity to review those corporate organizational documents and to prepare to depose Mr. Welch.

We took that deposition in mid-June, and we filed our objection a week later. That was a pretty significant undertaking to pull that information together within the week and put the brief together that we did, but we did that and we put that before the Court.

Thereafter, the debtor were set to file their reply brief the following week and we were going to have a hearing the following week, but it was set for the same day as the proof of claim hearing that was going to be -- I'm sorry -- the class claim hearing for Mr. Haviland's client and we weren't going to get to it all in one day. So, we agreed to extend the deadline for the debtors to file their reply brief and, ultimately, we pushed even further because Mr. Welch had, I believe he was out of the office last week. We originally talked about doing it the 13th and we pushed it to the 23rd.

So, this last month was extended, you know, for reasons -- there was never any expectation or understanding from the debtors' perspective that we were going to continue

to take discovery on this issue. We have always said, and I recall saying this to Your Honor here in front of you on our 30(b)(6) motion for quash, we've always believed you cannot disentangle the issues that the debtors put forward in this motion, this objection, from the broader merits of our claims. That's why we, right away, when we filed the estimation motion, we sought that discovery.

And the debtors took the position on this motion, on this objection, rather, they said, it's not relevant here. The question is who actually did what, the merits of the claim. That goes, if ever, to confirmation.

And then whenever we got in front of Your Honor to argue for discovery on estimation, again, the debtor said, that's for another day. You'll get that discovery later.

So, we were limited when we came in on this objection to the universe of information that they said this was about. And I told Your Honor back when we were in front of you on the 30(b)(6) argument, I said, they're drawing artificial lines and distinctions here, because you can't disentangle, you know, documents about what the different corporate entities are supposed to do or don't do, and who's involved on that level from questions about who is involved on a more substantive level, and do our claims have merit and if so, in what boxes.

So, Your Honor, I just want to put that on the

record, because I believe that goes to the issue of the reasons for the failure to amend. I appreciate Your Honor understood that we were always going to move for leave to amend. We thought the purpose of the objection, Your Honor, was to tee up this dispute to the Court via a contested matter, which we were obviously prepared to do today.

You know, if Your Honor believes that the complaint does not withstand the standards of the first wrung of Allegheny, then we think under the circumstances, Your Honor, it would be fair and would not prejudice the debtors to allow us to leave to amend. They know the facts. They know what we're going to say. It's not like they have to do anything new to prepare themselves for that case.

It's just a matter of them making us jump through these hoops to try to prove-up the claims that, you know, we have had and that they have known about for years. And it's really just a question at this point about, do we get to -- if we have valid claims, because one way or another, we're entitled to ultimately try to prove-up our claims. If those claims are valid, do we get to go after the entities who are, at the very least, involved in the Acthar-related conduct, and maybe, ultimately, the entire Specialty Brands, or are we stuck with ARD and PLC.

PLC is the parent company -- virtually no assets in comparison to the overall enterprise value of the debtors,

and ARD, as well. ARD is an entity that has brought in billions of dollars over the years from the sale of Acthar and about 95 percent of it has been removed. And I'm not saying it's a fraudulent transfer or anything like that, but the reality is that what it reflects is that these entities are treated as a single enterprise. And I use that word because that's what the Copperweld Court talks about, it's coordinated conduct amongst those entities by the same people who largely sit in either officer or director positions in most of the boxes.

And if it turns out that this Court decides, via estimation or at confirmation or whenever it occurs, that we have valid claims, both the equity and the law require that we should be able to go at the boxes that have that value, and that's what this is really about. Are we going to be allowed to do that or is that value going to be allowed to go to the other unsecured creditors of the Specialty Brands business.

I don't have anything further, Your Honor. If you have any questions, I'm obviously happy to answer them.

THE COURT: No questions. Thank you, Mr. McCallen.

Mr. Haviland, before I go to you, we're going to take a lunch break. So, let's recess until 12:45.

(Recess taken at 11:59 a.m.)

(Proceedings resumed at 12:45 p.m.)

THE COURT: Good afternoon. We're back on the record.

Mr. Haviland, you may proceed.

MR. HAVILAND: Thank you, Your Honor.

It's a little difficult to close in a hearing when the record hasn't been fully discovered and presented, so I'm going to try to do so succinctly, based on all that you've heard.

At the outset, I agree with Mr. McCallen on the law. I think he adequately and appropriately explained the Allegheny standard and we agree that it's not as robust as Rule 12, which we faced no less than five times in the underlying litigations. But at the outset, I want to address a couple of open issues.

Number one, the Court had asked about the issue of claiming against Brands and Generics and I just want to reiterate that we, the ad hoc Acthar group, and, it is important, Judge, to differentiate claimants. Too many times, I think there's a one-size-fits-all with the debtors' objections and they do toggle between our positions and our claims in their papers, but I want to be crystal clear with the Court that we make no claims against the Generics side of the business. We haven't attempted to do so.

To the extent the debtors may point to a claim

against Mallinckrodt, LLC, which is in the Brands -- the Generics side hierarchy, and I'll show in a moment, that the substantial evidence that we have shows that Bill Hilmer (phonetic), Hugh O'Neill (phonetic), and other executives in the Brands business signed documents in the name of that entity for Acthar. So, they can call it a generic today. But it wasn't before, and when that changed is what discovery is all about. So, I just want to be crystal clear, we are seeking to claim only against the Brands entities that are involved in and responsible for Acthar.

Number two, we did not file prophylactic proofs of claim. We specifically demarcated those debtors whom we believed were involved in Acthar. There's no footnote in our proofs of claim that say we're unsure; we were very sure about who we claimed against.

And we, unlike most claimants -- and we haven't heard from Mr. Eisenberg, who has a declaration talking about 45,000 unsecured claimants who have zero value -- well, that's not us. We had claims that had very clear addenda to explain our position and had three attachments. Number one, the complaint, and I want to pause on that for a moment just to point out to the Court that the debtor has put into evidence before you, Exhibit Numbers 9, 10, 11, 12, 14, 19, 20, 23, 25, 26, and 27, which are the complaints of the ad hoc Acthar group litigants, and almost all of the orders

denying Mallinckrodt's motions to dismiss, both under Federal Rule 12 in three instances and the State Court Rules in Pennsylvania and Tennessee.

And that's important. I know Your Honor has several times observed that Rule 12 isn't the end, but it is at this point in terms of pleading. We have pled claims and the debtors address antitrust, RICO, and unjust enrichment, but they haven't addressed consumer fraud, which is in the Pennsylvania cases, both before Judge Schuller in the federal court, and in the state court case now before Your Honor, the 542 cases before you under the Pennsylvania UTPCPL. They haven't addressed that at all, nor have they addressed fraud or conspiracy, causes of action which have survived their motions. So, they haven't attempted to demarcate their position among the various claimants.

And then, finally, Your Honor made a comment about bad faith and lack of support. If that was directed at us, I respect the Court's observation, but we can't agree that what we've attempted to do by providing that support was done in bad faith. We, unlike, anyone, gave a damage model and a quantification, based on actual purchases of Acthar. That's our Exhibit B. Actual purchases. In fact, that so incensed Express Scripts that they moved to suppress and put under seal all of our claims, and they currently are all sealed. No one can see them, except the Court and the debtors.

And then the third thing we did to substantiate, and this is about substance, substantiate, we gave the complaint that five judges have said it passes muster under Rule 12. Then we said this claimant, and there are over 70, this claimant fits this claim because there is an ASAP form, Acthar support and access program form. Now, if you read any of our complaints, we allege that beginning in 2007, that's how this company changed the world. That's how they created a distribution model, a marketing and sales paradigm that allowed them to take the price from $40 to nearly $50,000, the ASAP form.

And by showing the Court through our claims that every single claimant had a beneficiary with one of those forms, we took that claimant and put them within the complaint. Now, that's the overarching approach.

I want to get to the issues that the Court raised about these other entities and I want to walk through it a little differently. I won't repeat the Allegheny standards.

I will point out that those Rule 12, the PO rulings and the Tennessee ruling demonstrate that we satisfied Twombly and Iqbal and that we did not group-plead. And why that's important is because Mallinckrodt never made that argument, even though we sued the PLC and ARD. They never made that argument; Express Scripts did, and it was rejected because, and counsel pointed out we've amended our

complaints because at times when the Court said, we want you to differentiate your cause of action as between these various entities, we didn't and as to the five Express Scripts entities, we survived that.

We argued the single-entity doctrine of the antitrust. Mallinckrodt did not. And we submit, Judge, the law of the case which comes up to the claim is that they don't get a do-over. They don't get to now say, we're not a single entity, but that's what they're doing, but they're doing it very carefully and very cautiously because they don't want to create this situation where they have these disparate corporate entities that can be sued. They want it to be an enterprise, one PLC.

So, we take the entity as an enterprise, as one, and I'll get to that in a moment. The evidence strongly supports that, overwhelmingly supports that.

But even if you look at it the way they want you to and break up this single enterprise into these buckets that, yes, they existed in a federal filing to the SEC, but nowhere do they say what the record in this case has shown, is they took the Acthar function and business and broke it up. Sent it to the U.K. Sent it to Ireland. Sent it to Luxembourg.

Nowhere, and I'll show you why that's true, all the documents are stamped highly confidential. No one gets

to see them. They don't put that business model out there. They haven't cited you any evidence where it's publicly available that MPL and MPIL had a collaboration agreement over the Acthar business where all the decision-making was done overseas. Nowhere has that been publicly divulged.

It only came in the last two months. It only came through Mr. Welch who's on the camera right now, telling us that's how it operated when he instituted DEMPE, D-e-m-p-e, decision-making for the company, as a tax convenience, so they get the benefit of Irish tax laws, the U.K. tax laws. They toggle back and forth, moved functions when it advantaged the corporation.

And I agree with Mr. McCallen, we're not saying that was evil. They can do what's in their best tax interests, but don't argue to us that because you've moved function over there, we can't follow the money, as Your Honor pointed out, and the function -- and I'll get to that in a moment.

But even if they are independent entities, and we don't accept that, we look at the independent entities as potential co-conspirators. And there's a reason why single enterprises don't argue this, because now, all of a sudden, you've got a horizontal conspiracy. You've got an entity on one plane that has functions, conspiring with one another to set prices to have a monopolization on a product. Boy,

that's an interesting proposition the debtors want us to have, that the PLC in conspiracy with the MPL and MPIL to maintain the monopoly for Acthar by suppressing Synacthen, by maintaining the distribution scheme. But if that's where they want to go, that's where I'm going to go.

We say in paragraph 212 of the Rockford complaint that beginning as early as 2007, the exact date being unknown not plaintiffs, and continuing thereafter until the present, the defendants and other unnamed co-conspirators between and among themselves, entered into an agreement and, otherwise, continuing conspiracy to cause my clients to overpay for Acthar. The rest is laid out in the complaint, which five courts, five, have found plead specific -- by the way, they argued 9(b), not specific enough in time, place, and manner -- rejected.

I don't think this Court can rule on what they're suggesting without going into those court's opinions and saying, I've looked at the pleading. We have tested it under 9(b). We tested it under group pleading. We tested it under Twombly and Iqbal and it survived. It goes to the next level of discovery, and that's important.

THE COURT: Well, Mr. Haviland, the complaints that you're talking about were only against PLC and ARD, so, to the extent the courts in those cases found that you survived the Rule 12 motion, it's only as to those two

entities.

And in Delaware, the corporate structure is sacrosanct and it is observed, unless proven otherwise. So, you had an obligation to come forward in your proofs of claim and allege facts that would show me and show the debtors that there were claims against these other entities, other than PLC and ARD. So, let's focus on that issue.

MR. HAVILAND: Certainly, Judge.

So, let's talk about the antitrust and let's talk about the facts. I want to start with the fact that in a price-fixing case, and we have that, the United States Supreme Court said in 1898 in the Joint Traffic case, as reiterated in the New Jersey case, 211 U.S. 1, there's a rule of reason that requires the fact-finder to decide whether under all the circumstances of the case, the practice imposes a restraint.

And I point that out, Judge, because Judge Capello, who ruled on this issue, said clearly that I am not going to decide whether a rule of reason applies.

They're asking you to essentially accept everything Mr. Harris said is true. Well, that's not the way it works.

Everything we say is true in terms of conduct. The judge did not decide whether it's per se -- by the way, per se, if they fix the pricing, we get right to damages --

he said at Rockford, 360 F.Supp. 3rd 754, the Court need not make this determination at this time. They're asking you to make that determination right now, what standard applies.

Do you take this conduct, which was described? We didn't know all the players and actors at that time.

And, Judge, I've got to point out an obvious thing. Mr. Welch hasn't testified, but a company like Petten Holdings, and I'll show you in a moment, a contract signed June 2020, didn't exist until February of 2020. I would have asked Mr. Welch this question: Mr. Welch, how is it possible that the City of Rockford can sue an entity that didn't exist until three years later?

Well, it's not possible. They created that entity. They moved the distribution function out of ARD to Petten Holdings. Now, how do we know about that?

We got the contract two months ago, not in the underlying litigation where the Court ordered all contracts to be produced, where Arnold & Porter reported to the Judge that they had done it, repeatedly said they'd done it, and they hadn't done it. That's a contract involving Acthar distribution with Petten Holdings never produced. That's Section 1.

Section 2, monopolization, and the judge in the Rockford case, at 360 F.Supp. 3rd 755-56, points out that a conspiracy to monopolize consists of a combination or a

conspiracy. We allege there was a conspiracy and there were many actors, many of which we didn't know. We talked about all the different entities with Express Scripts, but this debtor never once said there are other actors.

They hid behind the enterprise of PLC and represented repeatedly through discovery sponsor that Mallinckrodt took the position. Now, the judge, at page 747, described our claims as follows:

"The gravamen of the Plaintiffs' antitrust claims is that the defendants acted and conspired to raise prices exorbitantly high as part of a vertical price-fixing scheme."

Let me pause there. The price-fixing function has moved. We did not know that. I deposed Mr. Hilmer. He was asked by the FTC one month after DEMPE decision-making was put in place, who and how is the decision-making on pricing done?

He said, Mallinckrodt. He never said that MPL and MPIL-n a collaboration agreement, decide that. They go up to the executive committee of the PLC. That Mr. O'Neill has to fly over there. He never said that.

Now, the Court is being asked to fault the Plaintiffs for not doing our job, but what do you do when a witness doesn't tell the truth? That was the FTC.

Two years later, in 2020 -- three years later -- I asked him the same question. He said he testified truthfully

and never once under oath did he say, Mr. Haviland, I need you to know something. It's July of 2020. We've had DEMPE for a long time at this company. MPL and MPIL are deciding all these things. ARD is insolvent.

We learned through the document in this case, Project Easter, Project Gemini, Project Apollo, and a Project Creed (phonetic), we don't even know what it's about because it's all under privilege -- I'll show you the documents -- that they moved those functions out. Now, they did it for tax reasons, but Your Honor said we get the following conduct.

In the last two months, we've learned more than we've learned in the last four years about how this enterprise operates. They never told us that the entity that we sued was insolvent. Insolvent. Couldn't write debt. Had its debt-writing function taken away because it all got moved overseas. And the Court is going to fault us for not asking the right questions.

We never got to ask the senior (indiscernible), Mr. Trudeau, Mr. O'Neill, Mr. Phillips, who was never disclosed as a custodian, Dr. Romano, who I tried to depose months ago. They constantly, constantly run interference and argue with the blinders on that it doesn't relate to this issue. They don't want to put these witnesses up because it's their documents.

This company is only run by five to seven executives, Judge. I can name them for you right now -- I just did. They could have a hundred entities. It's a same people.

If you read the SOFAs, it's Brian Reasons, Ian Watkins, occasionally Mr. Welch comes in as executive secretary. It's the same people, and why that matters is because a part that they don't talk to you about when you have Copperweld.

By the way, they never said Copperweld to us, because that would have begged the question for the judge in Rockford, all right, let's examine the PLC and the ARD and whether they're conspiring with one another, parent and sub. They didn't want to make that argument.

But here's what Copperweld actually says, and it's out of Rockford in the context of ex Express Scripts arguing that it should not be held liable for the acts of its subsidiaries. Copperweld holds that the single entity cannot conspire with itself, either with its employees or its wholly-owned subsidiaries, 467 U.S. 769-770. I'm going to read to you what the Court says, so you don't have to take my word for what it says:

"The officers of a single firm are not separate actors. There can be little doubt that the operations of a corporate enterprise organized into divisions must be judged

as the conduct of a single actor."

Now, why is that important?

Because Mr. O'Neill, when he was deposed over in the opioid case, said I don't treat these entities as distinct entities. They're all just divisions. They're all part of the same enterprise. And I'm going to read to you what he says, and by the way, this is in the record, because I finally got the deposition and we put it before the Court. We didn't get his deposition, but we got the documents that were produced in the opioid litigation. It's Exhibit 157 is his CV and he was asked about and he says -- I'm trying to streamline, Judge, and it's taking me out of order. I apologize. I'll paraphrase. He says in his CV, and this is -- he had just updated a month before he was deposed, that there's one enterprise, there's one organization, and that these other entities he was asked about, and he was asked about SpecGX, the Generics company, but he was asked about Mallinckrodt, LLC, the entity that wrote contracts involving Acthar. I don't see those corporate forms. They're all divisions.

And there's something that Mr. McCallen said that I agree with, but I want to give a different flavor for. This enterprise decided to create, instead of divisions and departments like some entities do, Judge, they created separate corporations: holding companies, operating

companies, cash pools. That's a different way to do it, but the result is the same.

If they're operating as a single enterprise, you don't get to break up your liabilities and move functions and assets around, and if that's the position, then that's a legal question for this Court and any reviewing Court going down the road.

I want to go through, Your Honor, the proof, and the proof being what we had and what we didn't have, because that's really what is at the heart of the matter. It goes to the underlying claims as they were stated and as to our request for leave to amend. We put in the record, and, Judge, I am just going to make an overall proffer that defense counsel can respond to, the debtors' counsel, AHG1 all the way through AHG174, which consists of the debtors' documents with the exception of a handful of Express Scripts documents that the debtors didn't have and were pointing out they didn't produce, because they're in the files. They're documents that were shared between the companies but were never produced.

Now, Express Scripts yesterday agreed we could introduce those documents under the protective order in this case, as long as they remained under seal. So, I wanted to make sure that that is the proffer, that we're not asking that they be put in the public record. But I want to walk

through that evidence, Judge, because when you review the discovery that was conducted in the underlying litigation and what's attempted to be conducted here, you get to the same result.

We only knew what we knew and couldn't know what we didn't know. And let's not lose sight of the fact, our cases were stayed and we were enjoined. We were prevented, because of the freezing spell, from taking any discovery of either the debtors, third parties, or importantly, Express Scripts to find out how the relationship had changed.

THE COURT: Well, that's not true, Mr. Haviland. You had the opportunity to take 2004 discovery in connection with this bankruptcy case.

MR. HAVILAND: Well, Judge, it's interesting that you say that, because -- and my co-counsel, local counsel, Dan Astin is on -- we sought 2004 discovery and Mr. Stearn said we weren't entitled to it. He said that we had to work through the UCC. We then contacted the UCC to find out about producing discovery that they had. We just got that within the last month or so. We have attempted to take 2004 discovery. We've been denied it.

THE COURT: Well, you should have brought that to the Court's attention. It wasn't brought to my attention that you were denied 2004 discovery.

And I'll point out that you did, in fact, join,

filed a motion to join the UCC's 2004 discovery and then later withdrew it -- I don't know why -- but you withdrew your 2004 discovery request to join the UCC.

And why you didn't get it up until now, again, that's -- you know, you have an obligation to come forward and notify the Court if you're not getting what you think you're entitled to.

MR. HAVILAND: Well, Judge, we have repeatedly tried to follow your Court's admonition to write and ask for an audience. I don't think we've had an audience with you till since months ago when I was called at five o'clock to get on the call. Just this week we sought to have this issue of the depositions decided and then the debtors filed a five o'clock motion for a protective order that got moved to today. So, we've attempted to do that, but we've been unsuccessful.

I note that when the debtors write and ask to put the Shenk motion off, it gets granted. We don't get to comment on it. We don't get to talk about the implications to the plan or our claims, but --

THE COURT: Hold on right there, Mr. Haviland, because I left open that motion to give you the opportunity to respond. You filed nothing in response to that, so that's why I granted that motion.

Number two, you have never, ever, ever come to me

and said, we want 2004 discovery and the debtors are denying it to us -- ever -- and if you had, I would have heard it. So, don't put this on me, Mr. Haviland.

MR. HAVILAND: I'm not putting it on you, Judge. I'm pointing out that if there are tactics, it's the debtors.

THE COURT: No, the tactics are yours, because you're waiting until the last minute to then seek discovery and then file motions to compel and that's what's screwing up this process, not the debtors. You have an obligation to move the case forward, as well as the debtors do. You have an obligation to come forward if you're not getting discovery and you didn't do it.

MR. HAVILAND: Judge, that is just not the case, okay. We have, prior to this bankruptcy, aggressively sought discovery --

THE COURT: I don't care what happened before the bankruptcy, Mr. Haviland. I'm talking about what's happening in this case.

MR. HAVILAND: Well, context is important, Judge, because we're being faulted for what we knew about and didn't do before October 12th. Let's not lose sight of the debtors' position, that we should be faulted for all the little things they have taken out of the record from the Rockford case, which none of them say what I just said. They didn't produce any of the 2020 contracts, the collaboration agreements, any

of those documents were produced, even they were squarely asked for: all contracts, all communications.

We then asked again in this context and we're told it's overbroad. When they represented to judges -- and not just one judge -- that they had done it. Now, it's not these lawyers. I noticed that Ms. Shores was on in her hoodie a little while ago. It was Arnold & Porter. Repeatedly reported to judges that they had done what they were supposed to do.

You know, Judge, at some point in time, that is going to have to be dealt with. And whether -- you know, the bankruptcy can't stop a federal judge from dealing with misrepresentations in their courts and those representations were made to judge up in Rockford --

THE COURT: Mr. Haviland, I don't want to hear any of this. I want to hear what happened in this court. Because you have the opportunity to take 2004 discovery. You did not do so. You joined the UCC's, but then withdrew your joinder. You waited until just days before this hearing to seek additional discovery and you haven't shown me any reason why that discovery would have given you -- you've told me now you have all this evidence, you have all this information that would have allowed you to amend your proofs of claim, but you didn't do it.

MR. HAVILAND: So, Your Honor, I want to tell you

about --

THE COURT: You lost your -- I can't hear you, Mr. Haviland.

MR. HAVILAND: I, inadvertently, hit my mouse, Your Honor.

So, Your Honor made a comment to Mr. McCallen that you can look at the public filings and you can see all these entities. Well, one of the first things that Judge Johnston, as a magistrate, now a district judge in Rockford, ordered even before the Rule 12 motions, he said, and he asked me, Mr. Haviland, you know, if you had your wish list, what would you like?

I said, Judge, I'd like the organization charts. I'd like to see how this company is organized. And we put in the record, Judge, at ECF 171, that order. That order was 2018. Produce all those organization charts so we can see what they're talking about today. It was never done.

What was not produced, and I'm going to reel these things off just so you can have the record for it, it was never produced in response to that order.

THE COURT: If this is pre-petition stuff, Mr. Haviland, I don't want to hear it.

MR. HAVILAND: No, Judge, it's Mallinckrodt ACTH00000047, produced in this case. We have marked these as AHAG61, a 2016 organization chart which shows how the Acthar

ARD business was moved from a top-line position directly reporting into the PLC, all the way down to where it exists right now as a defunct entity. That's AHAG Exhibit 61, page 47. If you go to page 44, it's the 2017 chart. If you go to page 45, it's the 2018 chart. If you go to the next page, 69, it's the 2019 chart.

We never got the chart that Mr. Welch did at the first day hearing which lays out all the debtor organizations, because you have to go through the machinations of all these moves to see how the Acthar business was moved down, subordinated, and stripped of all of its assets.

This company merged with QuestCor. It didn't acquire QuestCor. They created the Mallinckrodt PLC as a 49/50 shareholder. We only had to sue the PLC, Judge. That's all we had to do in 2017.

THE COURT: Again, it doesn't matter what you did before the bankruptcy, Mr. Haviland.

What is at issue today is whether the proofs of claim that you have filed against the debtors, other than PLC and ARD, state sufficient facts to establish that there is a claim against those debtors, and that's what I want to focus on.

MR. HAVILAND: And I'm going to focus on that with you, Your Honor.

Mallinckrodt has proffered as an exhibit, two exhibits, that were marked in Mr. Welch's deposition, first produced in this case --

THE COURT: None of those exhibits have been admitted into evidence. I told you I wasn't having an evidentiary hearing today.

MR. HAVILAND: Well, Judge, I'm making a proffer now and I would like to offer them to be admitted. And Exhibit 60 and 61 are the collaboration agreements signed by Mallinckrodt Pharmaceuticals Ltd. and Mallinckrodt Pharmaceuticals Ireland Ltd., and in that document just produced in this case in the last couple of months, it details how the function of Acthar, the decision-making on manufacturing, distribution, pricing, marketing, and sales, was moved between Ireland and the U.K.; those two entities.

That document was created October 1, 2016. It was never produced in the underlying litigation. It was only produced two months ago.

THE COURT: So, you had it two months ago. Why didn't you amend your proofs of claim to add that to your proofs of claim against these other entities?

MR. HAVILAND: Because two months ago, Judge, I sought leave. May 21, I asked this Court for leave.

THE COURT: No, you didn't ask for leave. I went back and looked at your -- you filed a motion to dismiss the

claim objection and in that, the only thing you asked for was for leave to file a motion to amend later in the future and you didn't do that.

MR. HAVILAND: Your Honor, that's why I ask you, are we going to exalt form over substance?

Do you want a motion on that very issue when we haven't had the issue of whether or not their objections have been carried?

You know, it's a chicken-and-egg problem in my mind, and I don't really practice in the bankruptcy arena, but it seems to me that when we put forward a complaint that has passed muster by five courts and talks about conduct, now the debtor says, well, we broke up the band, Mr. Haviland, we moved all of these functions around, Mr. Haviland, catch us if you can, Mr. Haviland, figure out that we created entities in 2020 that you maybe should've known about even though they weren't described anywhere that they were doing Acthar, but you should have done something about that, even though we got documents two months ago.

So, I say in our response, and it's a group that filed it, if that's true, then we seek leave to amend to bring those facts to the Court.

Judge, if you're inclined to say under Rule 15 that the door is shut today, then just shut the door. I don't think the Supreme Court or the Third Circuit says that

when it comes to Rule 15. We're supposed to be getting to the facts and the truth. It seems to me we're just getting -- it's a game of time and running out the clock.

These debtors have stonewalled us repeatedly and if granted leave to file that motion, which I sought, and we'll file it next week. I'm not looking to put this off. We want that hearing on September 1, 2021, Judge. Let me say that again: we want that hearing. But we want to get there -- I know it's funny, Mr. Welch, but I don't think it's funny -- we want to get there, because we want to be able to prove our claims, okay. And we don't want to get caught in these traps that you've got the discovery.

We did not get those collaboration agreements; they were withheld. And if Your Honor doesn't want to look at what the other judges ordered, that's fine; that's your prerogative, I suppose, but in context of faulting us for not asking the right questions at the right time, coming in, we had.

What we also didn't know is all these projects, which repeatedly talk about Acthar-function moving, and Mr. Welch's deposition 13, MNK's Exhibit 62, Bates number 1558, produced two months ago, Project Easter, how they moved functions. And Mr. Welch repeatedly said it was for tax purposes, but the fact is it's more than that.

In this context, they're saying, you don't get to

claim against them because we did this machination. And, Judge, you should go through, and I'm proffering these documents because I have them now, and today is the day, Exhibit 62, Exhibit 55, Exhibit 56, Exhibit 57, Exhibit 58, Exhibit 59, Exhibit 63 are all the projects produced by the debtor two months ago, which it would take a team of people to figure out what all of those corporate maneuvers mean.

We've barely scratched the surface with Mr. Welch, in terms of all the different functions and move. What's clear to me as I sit back, I see the PLC, I see MIFSA (phonetic), I see CV. The two entities that financed Acthar, not with anybody within Mallinckrodt, no, no, the documents are clear, and they're in my proffer, the documents are clear. They gave equity and they're out of the money, and they took the borrowing capacity of QuestCor and financed against it.

QuestCor came in as a billion-dollar enterprise. By the way, they paid $5.8 billion. At the time, this company was only worth two. A two-billion-dollar company buys a six-billion-dollar company. Who had the stronger position?

So, MIFSA and CV created that debt instrument. And, by the way, that's how all the general unsecured noteholders are claiming now against everybody beneath them. But if you look at those document, Judge, and they're in the

record, I'm proffering them, the PLC did not give any guaranty to those noteholders, none. We sued the PLC.

So if you're going to look at these claims and we can't discriminate among unsecured claimants, because we're in the same position other than under the RSA they're getting $375 million and 80 percent ownership of the company. So they are getting that. We are getting some share of $100 million broken up among 64 different entities, most of which have no revenue, no assets, no money, no function, but somehow they're getting a share of that money and we're being told you get a little share of ARD, an insolvent entity that nobody knew about, and the PLC. Thank you very much, let's all go home because if that's the way that is going to play out then I think it's time for someone else to review it because that to me just shows you what is going on here, Judge. They took a company that was making a billion dollars a year and they stripped it dry.

Now I want to point out our discovery so you can have a clear record in terms of deciding whether to give us leave to file a motion for leave. We have put in the record the court's orders in Rockford's at A8-AG 152, 153 and 154. We have put in the record our multiple discovery requests 1, 2, 3 and 4, AH 149, 148, 150 and 151. We have put into the record correspondence between counsel for the City of Rockford and Arnold & Porter about their discovery

deficiencies AH 157 and 155. We have also put into the record, Judge, Mallinckrodt's custodian list in Rockford AH 156. You will find it interesting that people who were talking about it are not on it. Mr. Phillips is not on there.

Now Rule 26, I'm pretty sure, was amended a long, long time ago where the defendant has to tell us the people with knowledge. They didn't do it. In fact, we got a letter on August 12th, 2019 right before Bryan Cave left AH 158 giving a very short list of people that did not include the following important people that drive the decision making in this company.

Kathy Schaefer, the president of virtually every brand company sometimes Brian Reasons, Brian Reasons isn't on there. Gary Phillips, the head of MPIL, who with Dr. Romano makes all of the decision makings under the collaboration agreement. Mark Tradeau, the CEO, is not on there. You know who else isn't on there, Mr. Welsh the person most knowledgeable in this bankruptcy; he's not on the list. It's not our job to catch them, that is their 26 obligation. They should have told us these people were relevant.

Now we got from the debtors a document that I'm going to proffer, (indiscernible) 5, Welsh Exhibit 5, a summary of legal entities and it purports to explain what is a brand and what's a generic. The problem with that, Judge,

is the debtor decided what is brand and what is generic without any regard to the history that I just told you about that's in those documents. Mallinckrodt LLC, and I'm going to go through them, clearly signed documents on behalf of this entity that is the brand entity time and time, and time and time again.

I want to point out another fact that is relevant to the issues of whether or not we get to go after these entities. There's two documents you put in, the Irish statutory account filings, AHG 9 and 11, and a cover at 10. In those filings, Judge, the brand entities exist in one location. 675 James S. McDonnell Boulevard, Hazelwood, Missouri.

One of the factors the courts look to is do they have different offices. They have one. That is their office. We didn't know that. We didn't know we shouldn't be looking at all these other entities. All these now brand entities that are working the Acthar business. The point is, Judge, the person that knew this the most was never deposed. He was ordered in Rockford to appear. The first time you and I spoke was to quash that subpoena of Mr. O'Neill. He has yet to testify. We deposed the people they put-up, Mr. Hillmer, the executive assistant, Ms. Falconi, and Mr. Close [sic], but that's it. That is all we got.

Why that matters, Judge, in the record we put in

the opioid litigation which these debtors are involved in, AHD 63 and the pleadings that follow 62 which frame the issue for Judge Polster about whether or not this PLC, whom we sued -- by the way, I don't want to cast aspersions on anyone, but none of the blues, the insurance claimants, sued anybody. Let me repeat that, they didn't sue anybody. There is no complaint.

So if you're going to judge claims in terms of whose where in the pecking order we sued, we litigated (indiscernible) 12, we framed the conduct that courts have agreed with. Those blues entities they haven't explained why they have a claim. Most of them, from what I can tell, Judge, are third-party administrators. They don't even pay for Acthar. They administer for my clients. It seems to me that is a double DIP. Humana, and I'm not going to pick on Humana, but they sued the PLC then dismissed the PLC. We didn't. So we have claims against the PLC and ARD.

The reason why the judge, and I won't repeat the citation to the unreported case of Judge Polster, he looked at the plaintiffs' proffer and Mr. O'Neill's transcript which was under seal, but it's at 171, he testified:

Question,

"What's your job?"

Answer,

"I am in charge of the brands. I am the executive

vice president."

Question,

"For what organization?"

Answer,

"Mallinckrodt Pharmaceuticals."

Let me pause there. There is no Mallinckrodt Pharmaceuticals. You can look at that list there is no entity called Mallinckrodt Pharmaceuticals. Every single witness we deposed curiously said they work for Mallinckrodt Pharmaceuticals.

He is then asked,

"What is the PLC?"

Answer,

"I believe that is the holding company."

Question,

"Who pays your salary?"

Answer,

"I don't know."

Then he goes onto say, when they were asked about the PLC again, the entity we sued, "You think of it as all one company, counsel," and I'm on Page 18 at Line 5, "Well, I think about it as Mallinckrodt Pharmaceutical and then the way I think about it there's subsidiaries attached to it." That is the highest ranking officer in this company testifying under oath that he thinks about it as one company.

What you are getting today, though is lawyers. Latham & Watkins, Wachtell who were part of the original merger agreement, they both represented those entities, they're arguing to you now that it's different. They're not letting the executives come forward, Judge, and testifying under oath what I just read to you. Then he is asked,

"What do you do?"

Answer,

"The operational piece is run by myself and an operating committee."

That is on Page 19. That is the record. In his CV, and I pointed this out, its Exhibit 172 he says its "One commercial organization." There is a franchise. The ARD franchise. Then he talks about in communication with outsiders including investors and key stakeholders the ARD "division." He doesn't say Inc., LLC, he doesn't say it has to go all the way up this hierarchy to get to MEH, to get to the PLC. He says I am the highest ranking officer, it's a division.

By the way, separate witnesses would depose Mr. Kilper who is in finance. Mr. Welsh may know him. His deposition is now in the record at 173. He says, again,

"Who do you work for?"

Answer,

"I work for Mallinckrodt."

Question,

"Which Mallinckrodt entity is your employer?"

Answer,

"I don't know. I work for Mallinckrodt."

Question,

"Who pays your check?"

Answer,

"I don't know."

Question,

"Where does the money come from?"

Answer,

"I don't know."

Then he talks about,

"What position do other executives, Mr. Harbaugh, have?"

Answer,

"You're talking about legal entities. I don't know."

Question,

"From an operational standpoint do you make distinctions between the legal entities in Mallinckrodt?"

Answer,

"From an operational perspective I do not."

That is Page 12 of Exhibit 173. His CV says the same thing at 174. Mallinckrodt Pharmaceuticals. This is

the evidence, Judge. You're now being shown this chart -- and I understand corporate law, we all get that in law school, but these debtors are trying to hide assets and liabilities, and shield an insolvent corporation. Judge, if you read those projects that I read Easter [phonetic] and Gemini we only found out that ARD was insolvent as of the fall of 2018 from Mr. Welsh, insolvent. It had no ability to write anything. Every single function got moved out; HR, legal, finance, manufacturing, IP, research and development, distribution, pricing, marketing, sales.

I want to turn to that right now and then I will conclude. All those functions no longer reside in ARD, none of them. We litigated the issue of the contract, the exclusive distribution contract which is in the record. Your Honor has seen it a couple times, Exhibit 170; it's the 2007 agreement signed by then Questcor. It was only amended 12 times and the last time was 2017, Exhibit 169.

I asked Mr. Welsh I that agreement is still operative and he said yes. Here is the problem, we didn't get these documents. There's a warehousing agreement signed June 10th, 2020. It's produced in this case two months ago at MK ACTH 1762. It's in your record, Your Honor, as Exhibit 53. We didn't get the transmittal from Wachtell, Exhibit 51 which was signed off by the MPIL organization. There it's signed by Mr. Pio [phonetic], that's Exhibit 51.

We didn't get the bill of sale which transferred $561 million from ARD -- by the way, don't take my word from it, the ARD SOFA in the record at 969, Docket 969, at 4.2 MPIL received $561,654,617 as an intercompany commercial chain transfer. That is why it matters. June that happened. The bill of sale produced, which is Exhibit 52, references a third amended and restated distribution agreement from September 2019 between MPIL and ARD. It's a distribution agreement.

I can't tell you how many times we asked for distribution agreements because the lead document from '07 is a distribution agreement, never produced. ARD document signed with MPIL never produced. No excuse. There is an assumption agreement MPIL where the operations were turned over to SD Operations, a new entity. Judge, you don't have any record in front of you, but if you look at our LEHB complaint, and I put that in the record, that is the one we filed for post-petition conduct, we detailed all these entities and when they were formed. And most of the ones we're going after were formed after Rockford sued.

So Exhibit 55 is the assumption agreement, never produced. Exhibit 56 is the transmittal, never produced. Exhibit 54 a distribution agreement, never produced. As to the (indiscernible) operation manager is 59, never produced. Exhibit 58 SD Operations transmittal, never produced. A

services agreement at Exhibit 82 -- by the way, these are all in June of 2020, all signed in June of 2020.

Now we're to July, July 8th now all of a sudden we see Petna Holdings [phonetic] signs an agreement with ARD, this is Exhibit 2, and it seems to me, Judge, all the functions get transferred out. ARD says it doesn't possess the knowhow to do the things it's been doing since Questcor did them in '07 and now all of a sudden they're getting transferred by an entity that was formed in February called Petna Holdings, Exhibit 2.

Exhibit 94, those functions are now transferred to a company called SDE Services, never existed before 2020. September 8th, 2020 that happened. September 8th, but we're supposed to know that and sue SP Shared Services because of a contract that was signed on September 8th.

I am going to just point out, Judge, that there are a litany of documents that go to the issue of Mallinckrodt LLC and the reason why I keep to this is if you look down to what the debtors described as the brand side business which goes from NIFSA, you've got CV, and then you come down and you see NEH, a Nevada Corporation, which historically was the entity that controlled all the US brand business. It goes to the left, to the Mallinckrodt ARD Holding Company and then it goes to the right, to the generics. I'm sure Your Honor has seen the chart a number of

times.

THE COURT: Hold on one second, Mr. Haviland. I've got a technical issue here.

MR. HAVILAND: No worries.

(Pause)

THE COURT: All right. I've lost my courtroom camera, so I'm going to switch -- oh, now it's back. Never mind. Go ahead, Mr. Hughes -- or, excuse me, Mr. Haviland.

MR. HAVILAND: I see Your Honor. I'm going to finish up here. I'm trying to point out to the Court as quickly as possible how the functions are moved. We walked through distribution; we talked about the collaboration agreement which deals with pricing.

I do want to touch upon R&D because, Your Honor, when you rule denying our motion to compel, but granting limited leave, you said follow the money -- and I'm going to paraphrase -- but follow the function as well. Research and development, an important part of this, had been transferred in 2014, shortly after the merger. That document is revealed by AHG No. 100, a document signed by MPIL and Mallinckrodt ARD, Inc., the defendant in our case.

And I can't say it enough, Judge, if Arnold & Porter were litigating with us right here, they'd say, yes, we asked for it five different ways. It's not over-broad to ask for the research and development services agreement, it

was only produced two months ago. That's how we know that R&D got transferred.

Now, I did say I wanted to touch upon Mallinckrodt LLC because there are a few entities when you look at those projects that moved over from the brand side to the generic side -- and they may be generic-oriented today, but they weren't -- Mallinckrodt LLC is the one that stands out, Judge, because repeatedly they signed contracts, beginning with a document in 2015. That exclusive wholesale product purchase agreement that we've described was modified by Todd Killian, the vice president of market access for Mallinckrodt LLC, using the same address on McConnell Boulevard up in St. Louis. That's at Bates number 109.

Exhibit 34 is a rebate agreement signed by LLC; Exhibit 35 is a distribution agreement with Caremark signed by LLC; an inflation agreement signed with Express Scripts at Exhibit 8, signed with LLC; Caremark again, Exhibit 36.

The rebate agreements, I think they say in their papers that these are just isolated PBM agreements, they're not. The distribution, the sales, and the financing in terms of inflation and rebates are signed by Mallinckrodt LLC.

And by the way, Judge, the one I'm pausing on, number 49, here's what the read says at the beginning, the third amendment to the rebate agreement with Caremark, "Mallinckrodt LLC, the manufacturer."

Now, these are legal documents. You've got -- you want to respect the entity, I do. So if the LLC says, Mallinckrodt LLC on the generic side says we are the manufacturer of Acthar -- and, by the way, this is signed by Hugh O'Neill, SVP President, U.S. Specialty Services -- I take him at his word that they're the manufacturer.

Price increases, that's another important function. That function got moved and the discussion begins at Exhibit 20. And then there are a series of price announcements, which we point to under the exclusive agreement, where they announce the prices in concert with Express Scripts. And these documents were all signed by Mallinckrodt LLC, not ARD; 44, the December 2014 price announcement; 73, the June 2015 price announcement.

And by the way, I'm glossing over, but each time Acthar is going up thousands of dollars. In 2015, it went from 32,000 to 34,000. On Exhibit 68, 2016 price increase, it goes from 34 to 36,000. Exhibit 39, it goes from 34 to 37,000. All signed by Bill Hilmer, Senior Director, Strategic Pricing and Contracts, Mallinckrodt LLC, not ARD. And he was deposed and asked these questions.

I'm going to finish with a couple of other points. The legal, which is a function. We've shown you, Judge, in the prior issues with Arnold & Porter, there was one engagement. And there was an issue about whether or not

Arnold & Porter represented all the different entities and I think the ruling was, well, they can represent the affiliates, but where a single entity engages one lawyer in one engagement, well, that denotes the fact that it's one single enterprise because they're going to do a conflicts check. If they're different enterprises and Arnold & Porter represents one and some other company represents another, there may be adversity there. But those exhibits, 164, 165, and 166 we'll maintain under seal, but that points out to us that the company is acting as a single entity.

Finance, Mr. McCallen touched upon that, but the cash management system was done through one function through these holdcos. We put in the record Exhibit 7 and then, importantly, the agreements, the master cash agreements at Exhibit 5 from August of 2020, and Exhibit 6, it's September 2021. The signatories of all the different entities we're talking about and their right to get cash, one person, Brian Riesen signs for all those entities to give them the right.

My point being there's only a couple of people that are running this entire company. The Mallinckrodt Pharmaceuticals brand, undifferentiated, shows up in their balance sheet, Exhibit 21 and 22. Their actual balance sheets, if you look at all the money coming into the organization and denotes it as Mallinckrodt Pharmaceuticals, it doesn't put it in these different buckets, these cash

pools, it looks at it as an enterprise, money coming into one organization, and then the organization reallocates those monies.

Finally, Your Honor, we put into the record to give you direction in terms of where we would go with an amended pleading. Well, we've already done it. We filed a complaint on behalf of the Law Enforcement Health Benefits Fund, it's at Exhibit 168, that lays out these entities and who they are and what they do. So the debtor has known about that since May 26th, 2021. We sought leave to amend May 21, but that pleading was filed, it's now in the record before you.

And I'm going to finish with that, Judge. And I want to loop in the committee because they filed a pleading last night, it's at Docket 3316. And we have worked by and through the committee, who is the committee for the general unsecured creditors, including our group, especially our group, our client sits as the chair. And as counsel now knows -- we haven't had contact with her until this last week -- because she has a fiduciary obligation to all creditors, but the committee came out and took a position and I think it's important, they said, "Since the commencement of the cases" -- I'm at paragraph 1 -- "the UCC has worked diligently to understand the enterprise threatening litigation and how this enterprise works."

And the UCC's own independent analysis, quote, "They cannot make sense of the debtors' assertion that the private claimant, Acthar claimants' claim for liability exclusively sits in ARD because the debtor entities were involved in the debtors' Acthar operations."

This is their discovery. They got this discovery with their professionals. That's their conclusion at paragraph 3. And they're coming out and saying they can't take a position at this point because they're not done their work, but you're being asked to say shut the door on any amendment. And I respectfully submit, Judge, there's only so many different ways you can ask, but if it's going to require a motion, we'll file it, we'll file it tonight. But to have the debtors argue that you should not allow an amendment in the face of all this evidence -- and I mean all this evidence -- what was not produced in the underlying litigation, what was dumped upon us in the last 60 days, and we said, if you're going to look to that, Judge, and rely upon that, then, please, give us leave to amend.

And maybe it was inartful to say we'll file a motion -- or we want leave to file a motion, I'm amending that now to say, Judge, we want to file a motion, because Your Honor should not have to rule in a vacuum simply upon proofs of claim that were filed February 16 which have this bona fides to them. This company is committing antitrust

violations, RICO violations, consumer fraud, and it doesn't seem like we're ever going to get that point. I'm not asking you to litigate the underlying question, but you can't ignore the fact that we have viable claims against the PLC and ARD, and they want to shut the door as to everybody else by their creation through some tax vehicle.

So we ask for leave to amend, Judge. Thank you.

But I want to admit these exhibits, Exhibits 1 through 174, and the Debtors' Exhibits that I've referenced, because this is the hearing. I believe Mr. Murtagh said at the beginning, now is the time. That's my proffer and I ask the Court to admit them.

THE COURT: All right. You've made your proffer, but I'm not going to admit them into evidence at this time.

Mr. Harris?

MR. HARRIS: Thank you, Your Honor.

We are not here to discuss whether there are valid claims against ARD or PLC. We do not object to them for today's purposes. We're here to determine whether these proofs of claims against the non-defendant debtors are sufficiently alleged. All these claimants chose not to amend, that was their call. Collectively, what you heard is one single attempt to defend the existing proofs of claim, that is attestor saying that this is just a notice pleading standard. That's not an answer.

The standard under Allegheny is, quote, "The claimants must allege facts sufficient to support the claim." There's no dispute they allege no facts as to any non-defendant debtor.

And as to notice pleading, the proofs of claim do put the debtors on notice of alleged conduct of ARD and PLC, but there's no notice of alleged conduct by any non-defendant debtor, there's no notice of what facts supposedly make these debtors liable. So there is -- you've heard no real defense of these proofs of claim. All this discussion is really about is the plea about whether the disallowance of these proofs of claim should be with prejudice or not.

So what did you hear to support essentially the request to allow them to amend that is extremely late? Well, attestor said a bunch of things about what they believe some of the non-defendant debtors did. And I guess they did that to preview what their amended proofs of claim would say in order to encourage allowance of this late amendment. But if you listen to what they said, everything they said is clearly insufficient. None of the activities they mention that they say these other entities did are the alleged wrongful acts here. None of them are what they claim to be the tortious wrongful acts.

They said some debtors were involved in manufacturing Acthar. Well, there's nothing wrong with

manufacturing Acthar. The second category, some defendants are engaged in R&D of Acthar. There's nothing alleged to be wrongful about R&D of Acthar. They said some are engaged in distribution, but what you didn't hear is that any of these entities are engaged in the only supposedly wrongful part of the distribution, which is the exclusive CuraScript distribution contract. If you look at the proof of claims and you look at what you heard today, that contract is only with ARD.

So what did you really hear is that other entities benefited from the proceeds of Acthar. That is insufficient as a matter of law for all of these claims. I noted the cases holding that as black letter law under antitrust law, RICO, unjust enrichment. You heard nothing in response, not one case other than a discussion of Copperweld. But what Copperweld just says is that affiliates share a state of mind, but you still have to allege that each affiliate engaged in antitrust conduct, and that's what all the cases I went through in my opening support. There are no cases that support this theory that just because revenue goes to an affiliate that affiliate is directly liable for antitrust, RICO, or unjust enrichment, you heard no case in response.

When are they going to come forward with a case that supports these theories? Well, today was the day. They filed -- they each filed two different briefs in response to

this -- to our objection. There is not one case they cite to support that the mere receipt of revenue by an affiliate is enough for direct liability under any of their theories.

We have had enough delay, it is time to let these issues be decided.

In terms of what you also heard is that there's overlapping employees or that some employees view Mallinckrodt as operating as one entity or as one business. That's not an argument for direct liability. I'm sure you will hear that in the context of substantive consolidation or veil piercing, but there's not one case that you heard that supports that those facts would create direct liability under any of these theories.

You heard Mr. Haviland mention that there have been prepetition motions to dismiss, some granted, some denied, but of course none of those were claims against the non-defendant debtors. No court has ever said that the allegations in those complaints are sufficient to support a claim against the non-defendant debtors.

You heard him mention consumer fraud claims. That wasn't mentioned in any of the briefs he filed and in fact he admitted in response to his interrogatories -- or the City of Rockford did that the City of Rockford had no contact with any non-defendant debtors. It's hard to see how that would substantiate a fraud claim against those entities if they

never even communicated.

You also heard the ad hoc group a mid-level employee, Mr. Bill Hilmer, as supposedly perjuring himself. That is outrageous and there's no basis and it's inappropriate to do live in a courtroom like that.

The other thing you heard was talk about shifting of corporate assets. Well, that is a fraudulent conveyance claim and, if it's supported and they want to argue it, or if they want to argue for veil piercing in response to confirmation, you will hear it then, but it is not a direct claim they can bring.

What is really going on? Well, you heard the truth. They want to go against entities other than the ones that they actually substantiated a claim against because the entities that they did put details about those things against they believe are now valuable and they're worried about value having shifted out of those entities. That is fraudulent conveyance.

So they've had materials before the bar date that would have allowed them to state facts about these entities. They have the 10-Ks that list every subsidiary in Schedule 21, just like every 10-K does. Our organization chart was part of the first day filing. The IP restructuring memo we filed in November 2020 said who owns the Acthar IP, what entities it was licensed to, and who paid and received

royalties. Why was not in that in the proofs of claim they filed months later?

You heard both sets of claimants run through all the evidence that they now have, but they've had that for months. Why didn't they amend their proofs of claim? There is no excuse provided by either of them why they did not amend before this hearing. No one has explained why they didn't pursue Rule 2004 discovery before the bar date, no one has explained why they didn't incorporate what they knew about these other entities before the bar date, and no one has explained why they didn't amend the proofs of claim after the bar date and before this hearing. They have known from day one that they have to substantiate their claims against each debtor. They could have amended and it is extremely prejudicial to the debtors and to this restructuring for this late amendment to happen now. They would have to file a motion to amend, we would have to hear it; we would then have to redo this hearing with their newly amended proofs of claim. If those in fact were to survive, we would then need to have an estimation process perhaps and a hearing on that. All of that pushing back and prejudicing the estate, the other creditors, and this Court.

It is too late, it is too prejudicial. They should have acted in the way in which the rules require, they should have supported their proofs of claim when filed or

they should have amended them when they had the information to do so.

With that, I'll pause.

THE COURT: Thank you, Mr. Harris.

All right, I'm going to take a recess so I can consider the issues. We'll recess until 3 o'clock. I'll come back on and I'll give you my ruling at that time.

(Recess taken at 1:55 p.m.)

(Proceedings resumed at 3:03 p.m.)

THE COURT: All right, this is Judge Dorsey. We are back on the record. I'm going to give you my ruling on the motion to dismiss the unsubstantiated claims.

Retired Judge Gross once wrote that "the bar date is important to the administration of a bankruptcy case as it brings certainty to the debtor's case by enabling the debtor and its creditors to know the amount of claims that exist. It is akin to a statute of limitations and must be followed." That's In re Nortel Networks, Inc., 573 B.R. 522 (Bankr. D. Del. 2017).

It's plain to me based upon a review of the proofs of claim at issue and the objections, as well as the parties' pleadings and the arguments presented today, that those claims were filed with a complete disregard for whether or not any claims actually existed against those debtor entities and in some instances with actual knowledge that either no

claim existed or likely existed at all. The strategy was obviously: file proofs of claim against as many debtors as possible in a corporate structure, assert that the proofs of claim constitute prima facie evidence of the validity of the claims, force the debtors to object due to the destruction caused to the debtors' plan of reorganization process, thereby gaining leverage against the debtors, then seek discovery on the claims in the hope of finding facts to support them. Those actions constitute bad faith and an abuse of the claims process established by the bankruptcy code and the bankruptcy rules. Therefore, I will sustain the objections to the claims and they will all be dismissed.

The proper procedure here, as I stated at the beginning of this hearing, would have been to seek Rule 2004 discovery, seeking information on whether or not potential claims existed against any of the debtors other than Mallinckrodt PLC or Mallinckrodt ARD, claims against which the debtors are not objecting, prior to the filing of the proofs of claim. For whatever reason, neither of the Acthar groups chose that path.

The bar date order was entered on November 30, 2020, setting a bar date of February 16th, 2021, giving the Acthar claimants 78 days to investigate whether or not they had claims against any other debtor entities. The only parties that sought 2004 discovery were the UCC and the OCC.

The insurance claimants didn't join the UCC discovery until March 16th, 2021, a month after the bar date. The Acthar group didn't join until March 3rd of 2021, again, after the bar date, but later withdrew that joinder for reasons that are perplexing to me.

The proofs of claim as filed failed to assert facts sufficient to support claims against the debtors. Therefore, those proofs of claim do not meet the sufficiency requirements under the Third Circuit's decision in Allegheny International 954 F.2d 167, 173, a 1992 decision.

The proofs of claim only assert claims against PLC and ARD, with in some cases vague references to alleged unknown co-conspirators and in other instances where they outright admit that the proof of claim is being filed, quote, "out of an abundance of caution," close quote, just in case they do have claims that can be substantiated through discovery. Those types of allegations are not sufficient to put the debtor, the Court, or the parties in interest on notice of a claim.

I will note that, despite the failure to seek 2004 discovery prior to filing the claims, the debtors did engage with discovery with the claimants after the objection had been filed, and I made rulings on that discovery indicating what was permissible and what was not permissible. Interestingly enough, that was in connection with a motion

brought by the debtors for a protective order, not a motion to compel brought by the parties -- the claimants. Neither group sought a motion to compel discovery, believing that they had -- that the information that they were seeking was being withheld. They waited until the Acthar -- the ad hoc group waited until just days before this hearing to seek a motion to compel, which was too late. Instead, the Acthar plaintiffs simply rested on their proofs of claim as filed and attempted to argue new facts in their responses to the objection.

Those responses do not qualify as motions to amend and I do not find that any of the facts alleged in the responses somehow modify the proofs of claim as filed. If the claimants believed that they had uncovered facts that would allow them to amend, they should have filed the appropriate motion and I could have evaluated those motions under the appropriate standards for amending a proof of claim.

Now, the ad hoc group claims that they requested leave to amend in their motion to dismiss, but, as I noted previously, all they asked for was leave to file a motion for leave to amend, not asking to amend the actual complaints -- or, excuse me, proofs of claim, and that would require me to engage in a factual finding that simply was not before the Court at this time.

So even if I granted a motion to leave at this time, because I find that the proofs of claim as filed fail to state any claim whatsoever against the debtor entities, motion to leave would actually be akin to a motion to file a late claim. And as noted in the Enron decision of the Southern District of New York, "the decision to grant or deny an amendment to a timely-filed proof of claim rests with the sound discretion of the bankruptcy judge." That is In re Enron Corp., 328 B.R. 75 at 86, a 2005 decision.

The court went on to say it's important to make sure that the amendment is not in actuality a new claim and, given that no claims were asserted against the debtors in the proofs of claim that I am dismissing, any amendment at this point would in fact be a new claim against those debtors. Because it is a new claim, it would require use of the excusable neglect standard in Pioneer. And, as Judge Gross noted in the Nortel decision, "Courts take a hard line when applying Pioneer," and particularly in emphasizing the reason for the delay.

I'll also make a note here on the Rule 15 relation back because that was raised by the ad hoc group. Relation back only applies under Rule 15 not -- does not apply, I should say, to adding a party, but only to amendments to the party against whom the claim is asserted. Well, again, there's no claims asserted here, so Rule 15 would be

inapplicable.

So what's the standard under Pioneer for allowing a late-filed claim? You have to show excusable neglect. And the factors are you have to show danger or prejudice to the estate; length of delay and impact upon judicial proceedings; the reasons for the delay, including whether it was within the reasonable control of the movant who acted in good faith; and all of those factors have to be balanced. And it's Hefta v. Official Committee of Unsecured Creditors, In re American Classic Voyages Company, 405 F.3d 127 at 133 (3d. Cir. 2005).

In this case, I find that allowing the filing of the late-filed claims would not comply with the Pioneer standard. It would require an estimation hearing to determine the validity of those claims, extensive discovery on the merits of those claims that would take months and would be followed by a days-long, if not months-long, evidentiary hearing before the debtors could move forward with their confirmation. That clearly has an adverse impact on these cases, particularly in light of the fact that I believe the debtors have indicated to me in the past the cost of this bankruptcy is about $20 million a month.

It's been nine months since these cases were filed, eight months since the bar date notice went out, almost six months since the bar date passed, with no attempt to seek to amend the proofs of claim. Allowing late-filed

claims now would have a significant impact on these cases.

The reasons for delay also do not favor allowing the late-filed claims. The movants never asked for 2004 discovery before the bar date, they never moved to compel discovery they claimed was not forthcoming. And, curiously, Mr. Haviland went through a litany of documents that he wanted to introduce into evidence that he indicated were produced two months ago. And yet, again, no motion to amend was filed.

So it's clear to me that these proofs of claim do not meet the standard for allowing an amendment, so I will dismiss them with prejudice at this point.

All right? With that, Mr. Merchant, do we have anything else on the agenda for today?

MR. MERCHANT: Thank you, Your Honor. I believe two other things. First of all, I think the debtors and some of the other parties had filed motions to leave in -- I mean motions to seal in connection with the various pleadings related to the unsubstantiated claim objection. I don't believe there's been any objection to any of those motions, though, consistent with the local rules, the objection deadlines were set for this hearing.

So, unless Your Honor has any concerns, you know, I would propose having the parties just upload orders with respect to each of those procedural motions.

THE COURT: I don't have any questions or concerns. Does anyone else wish to be heard on that issue?

(No verbal response)

THE COURT: Okay.

MR. MCCALLEN: Your Honor, and --

THE COURT: Oh, go ahead, Mr. McCallen.

MR. MCCALLEN: I'm sorry, Your Honor. I think it's actually the issue we just covered a minute ago. I understand Your Honor's order, but just for purposes of the record, can we consider that Your Honor has read the decision on the record and that's so order and there won't be a final written order of any sort, and we can proceed from there from today's record?

THE COURT: Is there any objection to just having it so ordered on the record or do you want to have a written order submitted under seal? I'll open it up, if anybody has a preference.

(No verbal response)

THE COURT: All right, nobody has a preference. All right, so I will just so order the record.

MR. MCCALLEN: Thank you, Your Honor.

MR. MERCHANT: Thank you, Your Honor. So, getting back to the motions to seal, may we proceed in the manner in which I proposed?

THE COURT: Yes, nobody has an objection. I don't

have any problem with them, so I will -- if you want to upload those orders, we'll get them entered.

MR. MERCHANT: Thank you, Your Honor.

The one remaining matter that was on the agenda for today was the debtors' preliminary objection to Humana's motion for substantive consolidation of these cases. I know that there was an agreement that that would go forward today and Keith Simon from Latham & Watkins will be addressing that on behalf of the debtors.

THE COURT: All right. Mr. Simon?

MR. SIMON: Good afternoon, Your Honor. It's Keith Simon of Latham & Watkins for the company. Can you hear me okay?

THE COURT: I can. Thank you.

MR. SIMON: Great. So, Your Honor, before we get into the details of Humana's request for an August 24th stand-alone sub-con hearing, I'd like to explain at a high level how I see this playing out.

First, I'm pleased to report that we've resolved our issues with the OCC. They agree with us that there's no need for a separate stand-alone sub-con hearing, and I believe someone from Akin Gump will be reading some statements on the record to confirm our understanding. They previewed that with us and we're on board with the concepts that they're going to lay out.

So, Your Honor, as everyone knows, our Chapter 11 plan does not contemplate substantive consolidation; rather, it respects the prepetition boxes and allocates value based on the assets and liabilities of those separate boxes. So we have teed up the issue. As part of our case in chief during the confirmation, we will show why respecting those boxes is appropriate under Section 1129 of the code. And if we can show that the boxes can and should be respected, then by definition we defeat and moot on the merits that the boxes should not be respected for whatever reason. Consolidated, merged, ignored, overlooked, pierced, it doesn't matter what the basis is, they're either respected or not, because those are mutually-exclusive positions.

And so our resolution with the committee, which they'll read on the record, is that for a confirmation objection, for them or anyone really to be able to argue the boxes shouldn't be respected, for whatever reason, A, B, and C, you don't need standing for a confirmation objection, you don't need standing -- or to file an adversary proceeding to make those arguments. But, again, they're just confirmation objections, they're not stand-alone causes of action, they're not stand-alone proceedings.

The committee was concerned that they would have to jump through a bunch of hoops just to say the magic words "alter ego," they don't. They can raise that as confirmation

objections, but that's all they are.

So, to be clear, people can file whatever confirmation objections they believe are appropriate and we will respond to those on the merits when it comes to respecting the boxes.

So, Your Honor, I did just want to raise a couple of issues that Humana asserted about the need for an August 25th sub-con-only hearing. First, in paragraph 11 of their reply, they say sub-con will have a substantial impact on plan negotiation and confirmation issues, so those should be heard first. Well, Your Honor, you could say that about any number of confirmation issues. Best interest tests, feasibility, unfair discrimination, a channeling injunction, releases, all of those have a substantial impact on the process, that's why they're heard together. And since we're the plan proponents, to be honest, we would like to present our arguments in the way that gives us the greatest chance of success. We think that is our right, unless Your Honor has different views, that we should present the arguments in the way that we think is most appropriate and it's not up for a creditor to say this should be decided first, unless Your Honor has preferences on the order we present arguments.

We of course believe an August hearing is a waste of time because sub-con is inappropriate and we will deal with the merits at the confirmation hearing.

The second point they make -- and this is the last point I wanted to respond to -- is they say, you know, what's the harm? We're all doing all of this discovery, there's no prejudice, so let's just have the hearing in August. Well, as my litigators will tell you, we're doing all of this discovery, all of the documents, all of the emails, all of the depositions, all of the expert reports for a confirmation hearing scheduled September 21st, not August 25th, and you can't separate sub-con from these other issues because it -- sub-con goes to where do assets and liabilities sit. That is fundamentally going to impact best interests and unfair discrimination at a minimum. So you can't just say this disclosure statement is only for sub-con, it's relevant to all of these confirmation issues, which is why you can't slice and dice all of the discovery. We're doing all of this now for a September 21st hearing, not August 25th.

So, with that, Your Honor, I believe that covered my points that we will address the boxes as part of our case in chief and people can object on whatever basis they want as confirmation objections. So, unless Your Honor has anything for me, I'll turn the podium over I think to Akin Gump and go from there.

THE COURT: All right. Who's speaking for Akin?

MR. HURLEY: Your Honor, Mitch Hurley with Akin Gump on behalf of the OCC.

THE COURT: Okay. Go ahead, Mr. Hurley.

MR. HURLEY: Thank you. So, Your Honor, Mr. Simon I think has accurately described the nature of our agreement in broad strokes. I do want to provide just a bit of context that I hope will eliminate why the OCC filed its statement in the first place and the significance of the agreement that it believes it's reached with the debtors.

So, as the Court is aware, the deadline for parties to file objections to the plan is September 3rd. As Mr. Price outlined for the Court on June 16th, while the OCC's investigation is ongoing, at present the OCC believes that the plan may substantially under-compensate opioid creditors on a number of grounds, and the OCC is considering a number of potential arguments it may raise in connection with objecting to confirmation of the debtors' plan. That process is not complete and we don't know yet exactly what form the OCC's objection, if any, will take, but certainly the OCC's intention always has been to raise all arguments and objections it may have to the plan at confirmation rather than by some separate motion or in some separate proceeding.

Among the potential grounds we're considering is investigating whether doctrines like substantive consolidation, or alter ego or agency or veil piercing, might be applicable in these cases in a way that would render the plan un-confirmable. We've sought discovery on these points

and intend to continue to take discovery on these points. But certainly to the extent that we determine to raise arguments like that, it has always been the OCC's intention, as I said, to raise those kind of points at confirmation and in a manner and at a time that's consistent with the schedule and protocols that have been entered by the Court already. So that would include in the OCC's written plan objection, which currently is due on September 3rd, and that I think brings us to where we are now.

As you know, the Acthar insurance claimants moved the Court for an order substantively consolidating the assets and liabilities of certain debtor entities and set a hearing on the motion of August 25th. The debtors filed their preliminary objection, arguing the motion to consolidate shouldn't be heard on the 25th and, among other things, they argued that a creditor can't seek an order to substantively consolidate debtor estates without first obtaining derivative standing to do so and filing an adversary complaint.

The debtors' procedural arguments drew the attention of the OCC because, as I just got through explaining, we're considering raising arguments of that kind in objection to the debtors' plan. If we do invoke sub-con or other doctrines of the kind mentioned in the debtors' papers -- and that's still an if -- the OCC may do it in a way that's very different than proposed by the Acthar

plaintiffs who seek to substantively consolidate only a subset of the debtor entities.

But for now what the OCC is concerned about is really only that we're going to be relying on theories of that kind as bases for objecting to the plan at confirmation if we determine it's appropriate to so object, even if we don't first file a motion either in connection with a contested matter or obtain derivative standing.

We were first reassured by some statements in the debtors' papers that suggested they agreed. You know, they argued that it would be wasteful to go forward on the 25th in part because it's inevitable that issues like sub-con will be litigated at objection to confirmation, whether named substantive consolidation, alter ego, or veil piercing, that was reassuring. During a subsequent discovery meet-and-confer, the debtors took a different position and that's why we filed our statement is really we just wanted to make sure that we got clarity, if possible.

Now, the debtors had taken the position in meet-and-confer conversations that in fact we wouldn't be allowed to argue sub-con or any of those other doctrines at confirmation without making a motion first. As we explained in our papers, that's not the OCC's view of the law. We believe that those kinds of arguments absolutely can be raised validly as plan objections and that, for example, just

to be really clear about what we mean by that, the OCC's view is, if it were to persuade the Court in connection with confirmation that debtor entities are subject to substantive consolidation and that, as a result, the plan does not satisfy aspects of Section 1129 because, for example, in a sub-con scenario, opioid creditors arguably would be entitled to more consideration than contemplated under the plan, the OCC would contend that would be an absolutely appropriate basis for the Court to reject the plan, even though the OCC did not first make a separate motion for substantive consolidation in advance of confirmation.

Now, of course, we want to do what the Court thinks we need to do and if the Court were to conclude that a motion or some other kind of procedural step is required for the OCC to raise arguments of that kind, we want to make sure those steps get taken and they get taken on a timely basis. So, again, that's really why we filed our statement.

Now, since filing the statement, the debtors reached out to us and, based on conversations that we have had with them, one on July 21st and again yesterday, we understand that the OCC and the debtors are now in agreement on those procedural issues. And this is our specific understanding of the agreement. We understand the debtors agree that substantive consolidation and theories like alter ego, veil piercing, and agency can appropriately be raised as

objections to the plan at confirmation without the need for any separate motion practice or other procedural steps by the OCC as a predicate to asserting those arguments.

For its part, provided that they can be raised and adjudicated on the merits as appropriate plan objections at confirmation, the OCC will not seek to have claims or arguments of that kind determined prior to the confirmation hearing in these cases.

Now, to be crystal clear and to perhaps state the obvious, the debtors are not conceding that substantive consolidation or alter ego or agency or doctrines that, if asserted by the OCC, should be applied in these cases. Presumably, if we raise those kinds of arguments, they're going to say just the opposite that those doctrines do not apply. But what we do understand the debtors to be agreeing to is that the OCC can appropriately raise those kinds of arguments as appropriate objections to the debtors' proposed plan and, if those kinds of arguments are raised by the OCC in connection with objecting to the plan, they must be resolved on the merits before the plan can be confirmed one way or the other, and that the Court may rely on those kinds of doctrines, if raised and proven, as bases potentially for denying plan confirmation, again, even though the OCC didn't first raise the doctrines by motion.

So that's the understanding, our understanding of

the agreement. We are still hoping, Your Honor, to get the Court's guidance because, of course, ultimately, it's going to be up to Your Honor regardless of what the parties agree. I will say, to be clear, if the Court prefers the OCC to proceed in some other way, if the Court would like the OCC to work with the debtors to come up with a written stipulation for presentation to Your Honor to be so ordered, we would be happy to do that.

The one thing that the OCC wants to avoid is to find itself in some kind of procedural "gotcha" situation. And so we would be very grateful for any guidance that the Court might be willing to provide, so we can hopefully avoid such a situation.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Hurley.

Well, I can't say off the top of my head whether or not it's required to file a motion for substantive consolidation rather than just including -- I assume you would include it within your objection to confirmation, which in effect is the motion -- is a motion, you -- or response to a motion, I guess. So you're objecting to plan confirmation because the debtor should be substantively consolidated and I think that is sufficient. I don't think you need to file a separate motion at this time, I don't think there's anything in the rules or the law that requires you to file a separate

motion for substantive consolidation. You might need to file one for standing to bring a substantive consolidation motion, but if you are bringing that motion in connection with objection to confirmation, I think that is fine. But if the parties want to make certain there's no -- nobody tries to raise later on the gotcha, you didn't file a motion, I'm happy to enter whatever stipulation the parties wish to enter into.

MR. HURLEY: Thank you, Your Honor.

THE COURT: Mr. Freimuth?

MR. FREIMUTH: Good afternoon, Your Honor. This is Matthew Freimuth from Willkie Farr on behalf of attestor and Humana. Can you hear me okay?

THE COURT: I can. Thank you.

MR. FREIMUTH: Fundamentally, what we have now after the filing of the preliminary objection by the debtors is I believe a dispute about timing, whether our motion for substantive consolidation should be heard in advance of confirmation, as it's been noticed, or at or in connection with confirmation.

Our view, Your Honor, is that we filed the motion seeking substantive consolidation of the debtors' specialty brands business and the Acthar entities on June 18th and noticed it for a hearing more than two months later. There was nothing improper about the filing of the motion, the

cases are clear that creditors have standing to pursue substantive consolidation. The debtors cite no case finding that a creditor needs to seek derivative standing to bring a sub-con motion. And the cases are clear that substantive consolidation can be sought by motion and that no adversary proceeding is required.

The filing of the motion and the timing for the hearing that we've set provide all parties in interest an opportunity to be heard on our request and, consistent with the dates in the confirmation discovery protocol, we've been pressing for discovery relevant to the sub-con motion, and I want to circle back to that. There have been some disputes that will likely require the Court's attention, but documents have been produced, depositions have been requested, they're in the process of being scheduled and noticed. And so the discovery needed and being sought coincides with and complies with the discovery provisions of the confirmation protocol and that fact discovery should be done in advance of August 25th when the motion is currently noticed.

It's not true, from our perspective, that hearing the motion before confirmation is going to create some sort of significant additional burden, the work is already underway. We think there's great benefit in getting to the merits of the sub-con issue promptly.

Mr. Harris in his remarks earlier today suggested

that we were engaging in an effort to slow these proceedings now, we're not. We want this issue heard and resolved promptly, Your Honor. He also alluded to the need to bring clarity to the debtors and the various constituencies about certain issues before confirmation, we think this is one.

So with that said, Your Honor, we think that it would be perfectly appropriate and efficient for this Court to hear the sub-con motion that we filed in advance of confirmation on the date we noticed of August 25th.

I did allude, Your Honor, to one issue with respect to certain discovery disputes. Whether you'd like me to sort of address that now or later, the mere point I want to make is we do have some disputes with respect to documents that we're seeking in connection with sub-con and, frankly, they cut across other confirmation and estimation issues as well. I understand the process is to request a conference with Your Honor. We would with respect to those issues, Your Honor, like to file a short letter early next week, perhaps by close of business Monday, teeing up the issues that exist today. We've heard the Court loud and clear that, to the extent that there are discovery disputes and issues that need the Court's attention, it's on us to file the motion to compel. So we would like to proceed on that basis.

THE COURT: All right. Well, let me hear -- Mr. Simon, what's the debtors' view?

MR. SIMON: Well, Your Honor, I don't have -- I defer to Mr. Harris or my litigators on the discovery disputes, but I kind of do go back to the idea of you can't just say discovery is underway and so we can have a hearing on the 25th because, again, all of the confirmation protocol dates and deadlines were with a September 21st hearing in mind. And it's no surprise that our plan doesn't have substantive consolidation, it never has. So the original plan, I believe, was filed in April, and there was various updates to the documents and the order was approving the DS and the plan for solicitation I believe was June 25th, roughly at that time frame.

So this issue about not seeking substantive consolidation has always been our position. I mean, we teed up that issue. So the idea that we could have a plan on file that's always been no sub-con and then a creditor can say, well, let's decide sub-con early, that's literally what we have scheduled for hearing on the 21st. So, again, like it's not just enough to say, well, discovery is underway; that's true, but it won't be done. That's the point is we need this time frame to have these issues decided together because, if anything is relevant to sub-con or not relevant to sub-con, it's going to impact other issues. Best interests and unfair discrimination come right to mind.

So if someone wants to depose a witness about an

intercompany agreement, assets moved from A to be, that's going to be relevant for sub-con. It's also going to be relevant for best interests and unfair discrimination because, if those intercompany agreements are properly documented and formalities are fulfilled, that negates sub-con by definition and now people have the facts about best interests and unfair discrimination, because if they sit at certain boxes where the notes are and not other claims, that is unbelievably relevant to best interests and unfair discrimination. So everyone is going to have to show up and argue every issue about where assets sit.

So it's not just this isolated issue that can be decided on its own on the 25th.

THE COURT: Mr. Freimuth, I was taken by one thing that you said that the discovery you're seeking does overlap other issues that relate to confirmation. So I guess I'm struggling with what's -- why not wait until we get to confirmation? We could have -- we could start off the confirmation hearing with the question of whether or not substantive consolidation is appropriate and then I can perhaps make a ruling on that before we go further into the confirmation hearing, which would resolve the issue one way or the other. Either the plan is not going to get confirmed or I'll overrule it and we go on with the other issues.

MR. FREIMUTH: All I meant to suggest by that

comment, Your Honor, is some of the specific categories of documents and data that we're seeking where we have disputes could very well be relevant to issues related to substantive consolidation. They may come up in the context of estimation of our prepetition claim or they -- you know, they may be relevant to various confirmation issues. So I was speaking specifically with respect to -- one of the categories, for example, is subsidiary minutes of the various boards of directors.

So, to your point, we think that getting clarity on these issues prior to confirmation makes good sense, it's an efficient way to resolve the question up front, so that we're not headed to a confirmation hearing months later with questions about whether or not the Acthar entities or the specialty brands entities should be consolidated or not.

And in response to the point about whether discovery is ongoing, the fact of the matter is the fact depositions and the witnesses that are going to be testifying about these issues, we understand from the debtor they're going to be made available for deposition in the first two weeks of August. So the record ought to be developed and ready to present to Your Honor in advance of confirmation.

MR. SIMON: Your Honor, it's Keith Simon. Could I say one thing, though, just to put this in context, which is if you scheduled a hearing for the 25th, I'm not sure if that

means that the OCC has to say we agree with sub-con right now, like are we going to do this hearing twice?

So, again, like I just don't -- I feel like it's going to be an inefficient use of this Court's time because that means that everyone will have to argue it. Otherwise, if Humana argues it and you agree with us, then does the OCC get bound by that as law of the case because you found that formalities were fulfilled and properly followed, but because Akin Gump didn't raise it they are now bound by that? It just -- I don't see how it practically works to have a hearing on this issue in advance of confirmation when you could say those exact same arguments about every confirmation requirement. This plan can't go forward if you think it violates the best interests test --

THE COURT: Well, I --

MR. SIMON: -- that's just one example.

THE COURT: Well, I think that's a good point. I mean, I can't -- if we go forward on a separate motion on sub-con, anybody who has a sub-con objection is going to have to participate in that. And because the discovery issues overlap one another, it just doesn't -- it doesn't seem to be efficient -- the efficiencies actually go the other way, I think. I think it's less efficient to go forward on August 25th with a sub-con, a separate sub-con hearing that's going to require everybody's participation just weeks before we get

to the confirmation hearing. It is a confirmation-type issue.

So I just think the efficiencies here would be let's do this on the first day of the confirmation hearing. We'll hear the motion for sub-con on day one of the confirmation hearing, and I can rule on that and then we can move into other issues. And maybe there's other issues that will come up along the way that we need to -- we could do this, you know, rule on them as we go rather than doing a week-long hearing and then have me try to write an 80-page opinion about all these different issues.

I'll open it -- I mean, what do people think about that? Mr. Freimuth, because it's your motion, so --

MR. FREIMUTH: Yeah, Your Honor, that would be acceptable to us to have that motion heard at the first day of confirmation, as you've just described.

THE COURT: All right. That allows us to get through all the discovery. There may be overlapping discovery issues, everybody is going to want to participate in those depositions, so I think that makes sense to do it that way.

Mr. Simon, does that cause any concerns on your part?

MR. SIMON: Your Honor, obviously, ultimately, if that's what Your Honor prefers, we will of course go with

that. But, again, you know, our initial idea was that our case in chief would moot this issue, but if it's Humana's independent motion, then obviously it's their burden to prove sub-con. It's their motion and, if they're the proponent, they're going to have to satisfy it by Owens Corning and it's their burden. So, if they want to have it heard first outside of plan confirmation the day of, it's their burden. I just want to make sure that that's crystal clear.

THE COURT: It is. It is your burden, Mr. Freimuth, you're going to have to meet the requirements of Corning to show sub-con.

MR. FREIMUTH: We understand, Your Honor.

THE COURT: All right. Okay.

MR. FREIMUTH: Apologies, Your Honor. There was the issue that I did raise with respect to some discovery disputes --

THE COURT: Yes.

MR. FREIMUTH: -- that have arisen that, frankly, have ripened up just, I would say, within the last 12 hours or so. So it's a few categories of documents, one relates to a request that we have outstanding for minutes of subsidiary boards, another relates to some outstanding data requests we have. My proposal, Your Honor, is that we just set a schedule today where we could file a short letter with the Court indicating what the disputes are and indicating the

relief we're requesting. We could be prepared to do that very early in the week next week.

THE COURT: Well, the one problem with very early in the week next is I'm going to be on vacation next week. I'm not going to disappoint my granddaughter. So I'm not going to do any work while I'm vacation. So I wouldn't be able to address it until the week after next.

Have the parties met and conferred on these issues and you're at an impasse, is that where you are at this point?

MR. FREIMUTH: We have met and conferred, Your Honor, I do believe we're at an impasse with respect to at least the request for subsidiary board minutes.

THE COURT: Well, that sounds like a pretty discrete issue. Why don't we -- go ahead and file it next week. I'll try to get to it as soon as possible. It may not be until I get back on August 2nd, but if the parties -- if you want to file a -- if it's just that one discrete issue, that sounds like it could be done in just a few pages, a few-page letter.

MR. FREIMUTH: Yeah. And to be clear, Your Honor, the other issue relates to data that we're requesting that we believe supports the liquidation analysis and valuation that underlies the debtor's disclosure statement. It is also a very discrete issue, so I think we could present both to you

within two pages.

THE COURT: Okay. Then why don't you go ahead and file yours Monday or Tuesday, whenever you are ready. I'll give the debtors an opportunity to reply by -- you know, I'll give you two days to reply, Mr. Simon or Mr. Harris, whoever is going to reply, and then we'll take it from there.

MR. FREIMUTH: Okay.

THE COURT: And I may just look at them and pass on to my courtroom deputy what my ruling is and he can let you know -- or let you know at least what I'm thinking. Maybe that will help move things along.

MR. FREIMUTH: Okay. We appreciate that, Your Honor.

THE COURT: All right. Okay.

Mr. Hurley, you raised your hand.

MR. HURLEY: Thank you, Your Honor. I just wanted to hopefully make something clear in terms of our timing. So it sounds like what we're contemplating is that the OCC will be able to make whatever arguments it has on sub-con or similar, if any, in its objection, and then also will have an opportunity to be heard on those issues at the outset of the hearing, and I guess alongside attestor or other parties that are making similar arguments. Do I have that right?

THE COURT: Yes, absolutely. Yes.

MR. HURLEY: Okay. And it may make sense, as you

suggested, Your Honor, for us to try and get that memorialized in a stipulation, and I'll reach out separately to Mr. Simon on that.

THE COURT: Okay.

MR. HURLEY: Thank you.

THE COURT: All right.

MR. SIMON: And, Your Honor, just procedurally, Mr. Hurley reminded me of a very good point. I mean, the hearing was originally scheduled for August 25th with an objection deadline of August 6th. So because it's going to be heard at confirmation, when I assumed our response would be part of our confirmation brief, but I wanted to make sure that was what Your Honor was thinking as well. I just want to know when our objection deadline is -- I know when the hearing is, but I want to know when we have to respond.

THE COURT: Well, if you make it a part of your confirmation brief, then Mr. Freimuth isn't going to get a reply.

MR. SIMON: Okay.

THE COURT: So I think we're going to have to set that as a separate schedule.

MR. SIMON: Okay.

THE COURT: So -- just so that he has the opportunity to file his reply. But I'll let the parties work that out in terms of timing.

MR. SIMON: We'll talk. Maybe the idea will be they have their plan objections due on September 3rd, maybe ours is due September 3rd for this, and then they reply at the same time as our confirmation brief, maybe something like that. But we'll talk and that's fine.

THE COURT: Yeah. Hopefully, you can get that worked out. I think that should be able to be resolved.

MR. SIMON: Okay.

THE COURT: All right. Anything else for today?

MR. MERCHANT: Your Honor, the only other thing I failed -- I neglected to mention that is on the agenda is the attestor and Humana asked that there be a status conference on their estimation motion, and that is the one remaining item on today's hearing agenda.

THE COURT: All right. Let me hear from attestor.

MR. FREIMUTH: Sure, Your Honor. You'll recall that when we had our estimation motion heard on the 7th we asked for a status conference to be set for the day on which Your Honor was going to hear argument on the unsubstantiated claims objection. Just by way of update, since June 7th, on June 21st, the debtors advised us that they would engage with us on discovery on the underlying merits of the claims in anticipation that estimation may be necessary, and so that process has been underway. Arnold & Porter, who represents the debtors in the underlying Humana case, has appeared,

we've engaged in meet-and-confers.

Practically, what that has meant is that since June 21st, when the debtors agreed to begin providing us merits discovery, they provided us with 1.8 million documents, some of which has taken weeks to load onto our review platform, but we are moving through that material as quickly as we possibly can.

On Tuesday of this week, the debtors advised us that they would anticipate that, to the extent that we have questions of their witnesses related to the merits of either the prepetition claims or the admin claims, that we would be prepared to ask those witnesses questions during the first two weeks of August. Obviously, with respect to the document flow, we have some serious concerns about that schedule. Obviously, whatever the debtors propose with respect to a schedule we'll consider, but there may well be issues to the extent that depositions get scheduled and documents related to the merits of either the prepetition claim or the admin claim remain outstanding.

So we're working through those issues. There's nothing, I think, ripe to present to Your Honor today, but I just wanted to alert you that that process is ongoing and we are getting quite a volume of documents. We've gotten commitments from the debtors to produce additional documents with no clear indication yet as to exactly when those are

coming. So we just wanted to alert Your Honor that that process is underway.

THE COURT: All right. Thank you. That's the problem with discovery is sometimes you get what you ask for. You've got too many documents to review.

Mr. Harris?

MR. HARRIS: And, Your Honor, just to follow up and clarify. Mr. Freimuth is right, we have been going forward with full discovery on the merits of the underlying claims against PLC and ARD to be prepared if we decided that estimation is needed, all that was awaiting a decision on our omnibus objection. So we will take this time and think about over the weekend whether we believe estimation is needed. You know, likely, I think we may decide it is not, and we can talk again and we're happy to talk again with attestor about our views on that, you know, next week.

I just didn't want to leave hanging out there that there was any decision made that in fact now estimation is needed, it may well be the debtors' view that it is not. But, as he said, we have been producing discovery regardless so the parties would be prepared in the event that we do need to estimate.

THE COURT: Thank you, Mr. Harris.

All right, anything else for today, Mr. Merchant?

MR. MERCHANT: I believe that's all for today. I

thank the Court for its time and have a great vacation, Your Honor.

THE COURT: All right. Thank you all very much. Have a good weekend, and I know my week will be better than yours.

(Laughter)

THE COURT: All right. We're adjourned.

COUNSEL: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded at 3:52 p.m.)

CERTIFICATE

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski June 24, 2021
Mary Zajaczkowski, CET**D-531

/s/William J. Garling June 24, 2021
William J. Garling, CE/T 543

/s/ Tracey J. Williams June 24, 2021
Tracey J. Williams, CET-914

LEAD, SealedDoc(s), MEGA, STANDOrder, CLMSAGNT, APPEAL

U.S. Bankruptcy Court
District of Delaware (Delaware)
Bankruptcy Petition #: 20-12522-JTD

Assigned to: John T. Dorsey
Chapter 11
Voluntary
Asset

Date filed: 10/12/2020
341 meeting: 02/12/2021
Deadline for filing claims: 02/16/2021

Debtor
Mallinckrodt plc
675 McDonnell Blvd.
Hazelwood, MO 63042
ST. LOUIS-MO
Tax ID / EIN: 98-1088325

represented by **Justin A. Allen**
Ogletree, Deakins, Nash, Smoak & Stewart
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
(317) 916-2533
Email: justin.allen@ogletree.com

Michael B. Bernstein
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave, NW
Washington, DC 20001-3743
202-942-5000
Email: michael.b.bernstein@arnoldporter.com

Jeffrey E. Bjork
Latham & Watkins
335 South Grand Avenue
Suite 100
Los Angeles, CA 90071-1560
213-485-1234
Fax : 213-891-8763
Email: jeff.bjork@lw.com

Sara A. Brown
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
212-906-1200
Fax : 212-751-4854
Email: sara.brown@lw.com

Liza L. Burton
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020

Michael H. Cassel
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street

New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: mhcassel@wlrk.com

Andrew J.H. Cheung
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: ajhcheung@wlrk.com

Mark D. Collins
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
302 651-7700
Fax : 302-651-7701
Email: collins@RLF.com

George A Davis
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
212-906-1200
Fax : 212-751-4864
Email: george.davis@lw.com

Garrett Spencer Eggen
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7700
Fax : 302-651-7701
Email: Eggen@rlf.com

Rosa Jean Evergreen
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001
202-942-5000
Fax : 202-942-5999
Email: rosa.evergreen@arnoldporter.com

Victor Goldfield
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
(212) 403-1000
Fax : 212-403-2000
Email: VGoldfeld@wlrk.com

Jason B. Gott
Latham & Watkins LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
312-876-7700
Fax : 312-993-9767
Email: jason.gott@lw.com

Christopher R. Harris
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
212-906-1200
Fax : 212-751-4864
Email: christopher.harris@lw.com

Matthew B. Harvey
Morris Nichols Arsht & Tunnell, LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
302-351-9393
Fax : 302-225-2571
Email: mharvey@mnat.com

Justin S. Kirschner
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Email: justin.kirschner@lw.com

Emil A. Kleinhaus
Wachtell Lipton Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: eakleinhaus@wlrk.com

George Klidonas
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
(212) 906-1200
Email: george.klidonas@lw.com

Kiet Lam
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
(212) 403-1000

Email: KTLam@wlrk.com

Garrett S. Long
Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
(312) 876-7700
Email: garrett.long@lw.com

Arthur Luk
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
202-942-5000
Fax : 202-942-5999
Email: arthur.luk@arnoldporter.com

John F. Lynch
Wachtell Lipton Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: jlynch@wlrk.com

Robert Charles Maddox
Richards, Layton & Finger, P.A.
920 N. King Street
One Rodney Square
Wilmington, DE 19801
302-651-7551
Fax : 302-498-7551
Email: maddox@rlf.com

Michael Joseph Merchant
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
usa
302-651-7700
Fax : 302-651-7701
Email: merchant@rlf.com

Phillip Mindlin
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: pmindlin@wlrk.com

Jason Moehlmann
Latham & Watkins LLP

330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
312-876-7700
Fax : 312-993-9767
Email: jason.moehlmann@lw.com

Hugh K. Murtagh
Latham & Watkins
1271 Avenue of the Americas
New York, NY 10020
212-906-1200
Fax : 212-751-4864
Email: hugh.murtagh@lw.com

Arielle Nagel
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
(212) 906-1200
Email: arielle.nagel@lw.com

Dan O'Meara
Ogletree, Deakins, Nash, Smoak & Stewart
1735 Market Street
Suite 3000
Philadelphia, PA 19103
215-995-2833
Fax : 215-995-2801
Email: dan.omeara@ogletreeedeakins.com

Sonia Kuester Pfaffenroth
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001
202-942-5000
Fax : 202-942-5999
Email: sonia.pfaffenroth@arnoldporter.com

Amy Christine Quartarolo
Latham & Watkins LLP
355 South Grand Avenue
Suite 100
Los Angeles, CA 90071
213-485-1234
Fax : 213-891-8763
Email: amy.quartarolo@lw.com

Brendan Joseph Schlauch
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7700 x7749

Fax : 302-651-7701
Email: schlauch@rlf.com

Eric Shapland
Arnold & Porter Kaye Scholer LLP
44th Floor
777 South Figueroa Street
Los Angeles, CA 90017
(213) 243-4000
Email: eric.shapland@arnoldporter.com

Laura Shores
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave. NW
Washington, DC 20001-3743
202-942-5000
Fax : 202-942-5999
Email: laura.shores@arnoldporter.com

Sarah Silveira
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7700
Fax : 302-651-7701
Email: silveira@rlf.com

Keith A. Simon
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
212-906-1372
Fax : 212-751-4864
Email: keith.simon@lw.com

Neil M. Snyder
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000
Fax : 212-403-2000
Email: skcharles@wlrk.com

Andrew Sorkin
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
202-637-2200
Fax : 202-637-2201
Email: andrew.sorkin@lw.com

Robert J. Stearn, Jr.

Richards, Layton & Finger, P. A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7700
Fax : 302-651-7701
Email: stearn@rlf.com

Amanda R. Steele
Richards, Layton and Finger
920 N. King Street
Wilmington, DE 19801
302-651-7838
Fax : 302-428-7838
Email: steele@rlf.com

Randall Carl Weber-Levine
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Email: randall.weber-levine@lw.com

Matthew Wolf
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
202-942-5000
Fax : 202-942-5999
Email: matthew.wolf@arnoldporter.com

Anupama Yerramalli
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Fax : (212) 751-4864
Email: anu.yerramalli@lw.com

Kelsey Zottnick
Latham & Watkins LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
(312) 876-7700
Email: kelsey.zottnick@lw.com

U.S. Trustee
U.S. Trustee
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

represented by **Jane M. Leamy**
Office of the U.S. Trustee
844 King St.
Suite 2207
Wilmington, DE 19801
302-573-6491
Fax : 302-573-6497

(302)-573-6491
Email: jane.m.leamy@usdoj.gov

Richard L. Schepacarter
Office of the United States Trustee
U. S. Department of Justice
844 King Street, Suite 2207
Lockbox #35
Wilmington, DE 19801
usa
302-573-6491
Fax : 302-573-6497
Email: richard.schepacarter@usdoj.gov

Mediator
Kenneth R. Feinberg

Claims Agent
Prime Clerk LLC
www.primeclerk.com
One Grand Central Place
60 East 42nd St, Suite 1440
New York, NY 10165
212-257-5450

represented by **Benjamin Joseph Steele**
Prime Clerk LLC
One Grand Central Place
60 East 42nd Street
Suite 1440
New York, NY 10165
212-257-5490
Fax : 212-257-5452
Email: bsteele@primeclerk.com

Transcriber
Reliable Companies
Attn: Gene Matthews
1007 North Orange Street
Suite 110
Wilmington, DE 19801
302-654-8080

Creditor Committee
Official Committee of Unsecured Creditors
Mallinckrodt plc

represented by **Patrick M. Birney**
Robinson & Cole
280 Trumbull Street
Hartford, CT 06103
860-275-8275
Email: pbirney@rc.com

Joseph W Brown
Cooley, LLP
1299 Pennsylvania Ave., NW
Suite 700
Washington, DC 20004
202-776-2060
Fax : 202-842-7899
Email: jbrown@cooley.com

John D. Cordani, Jr.
Robinson & Cole LLP
280 Trumbull Street

Hartford, CT 06103
(860) 275-8287
Email: jcordani@rc.com

Jamie Lynne Edmonson
Robinson+Cole LLP
1201 North Market Street
Suite 1406
Wilmington, DE 19801
302-516-1705
Fax : 302-516-1699
Email: jedmonson@rc.com

Weiru Fang
Cooley LLP
1299 Pennyslvania Avenue, NW
Suite 700
Washington, DC 20004
202-776-2110
Fax : 202-842-7899
Email: wfang@cooley.com

Allegra Flamm
COOLEY LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004
(202) 776-2985
Email: aflamm@cooley.com

Cathy Hershcopf
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6000
Fax : 212-479-6275
Email: chershcopf@cooley.com

Jonathan J. Kim
55 Hudson Yards
New York, NY 10001
(212) 479-6000
Fax : 212-479-6275
Email: jkim@cooley.com

Michael Klein
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6461
Fax : 212-479-6275
Email: mklein@cooley.com

David H. Kupfer
Cooley LLP

55 Hudson Yards
New York, NY 10001
212.479.6530
Fax : 212.479.6275
Email: dkupfer@cooley.com

James F. Lathrop
Robinson & Cole LLP
1201 North Market Street, Suite 1406
Wilmington, DE 19801
302-516-1700
Fax : 302-516-1699
Email: jlathrop@rc.com

Evan M. Lazerowitz
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6000
Fax : 212-479-6275
Email: elazerowitz@cooley.com

Summer M McKee
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6000
Email: smckee@cooley.com

Dana Moss
COOLEY LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004
(202) 842-7135vvv
Email: dmoss@cooley.com

Natalie D. Ramsey
Robinson & Cole LLP
1201 North Market Street
Suite 1406
Wilmington, DE 19801
302-516-1702
Fax : 302-516-1699
Email: NRamsey@rc.com

Lauren Reichardt
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6515
Email: lreichardt@cooley.com

Erica Richards
Cooley LLP

55 Hudson Yards
New York, NY 10001
212-479-6000
Fax : 212-479-6275
Email: erichards@cooley.com

Joshua Siegel
Cooley, LLP
1299 Pennsylvania Ave., NW
Suite 700
Washington, DC 20004
202-842-7891
Fax : 202-842-7899
Email: jsiegel@cooley.com

Cullen Drescher Speckhart
Cooley LLP
1299 Pennsylvania Ave NW
Suite 700
Washington, DC 20004
(202) 776-2052
Email: cspeckhart@cooley.com

Aric H. Wu
Cooley LLP
55 Hudson Yards
New York, NY 10001
212-479-6000
Fax : 212-479-6275
Email: ahwu@cooley.com

Filing Date	#	Docket Text
07/23/2021	3405 (6 pgs)	Minute Entry Re: 3389 ; Telephonic Hearing Held Re: 2165 , 2578 , 3228 ; debtors' first omnibus objection to unsubstantiated claims (2165) is SUSTAINED (***The record for this hearing is SO ORDERED***); order to follow; motions to seal (2578 and 3228) are GRANTED; orders to be uploaded for signing; Appearances: (See Attached Registration Sheets) (RC) (Entered: 07/23/2021)

PACER Service Center			
Transaction Receipt			
07/28/2021 15:45:48			
PACER Login:	mnat0009	**Client Code:**	49895-0003
Description:	Docket Report	**Search Criteria:**	20-12522-JTD Fil or Ent: filed From: 5/28/2021 To: 7/28/2021 Doc From: 3405 Doc To: 3405 Term: included

			Headers: included Format: html Page counts for documents: included
Billable Pages:	5	**Cost:**	0.50

CERTIFICATE OF SERVICE

I, Matthew O. Talmo, hereby certify that I am not less than 18 years of age and that service of the foregoing was caused to be made on July 28, 2021 via CM/ECF upon those parties registered to receive such electronic notifications and via email upon counsel to Mallinckrodt PLC and its affiliated debtors.

Dated: July 28, 2021

/s/ Matthew O. Talmo
Matthew O. Talmo (Bar No. 6333)